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SATURDAY, MAY 2, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF JOINT-STOCK COMPANIES.—No. I.^a

ON THE TRANSFER OF SHARES, AND THE LIABILITY OF SHAREHOLDERS.

SHARES in joint-stock companies are now held to a very great extent by all classes of the community, and we propose to consider the mode in which they can be transferred, and the questions arising thereon.

In general the act constituting the company gives a short form of transfer, and enacts that transfers of shares shall be made in that form, and the act also generally provides that the registry of the transfer shall be necessary to complete the transaction. The purchaser's solicitor should therefore apply to the clerk of the company to inspect the book of registry, as this will shew at once the true state of the title. But these simple forms of transfer will not be applicable to mortgages and other intricate transactions.

Shares in companies are now usually declared to be personal estate by the deed of settlement. The shares in the Avon navigation, however, are real estate:^b so are those in the New River.^c The shares in the Chelsea Water-works Company were, however, held to be personal estate, although

there was no declaration to that effect in the act. And it was also decided that real property, held for the purposes of a trading company, is in equity to be deemed in the nature of personal estate, although the company is a corporation, and the shares are assignable, and one shareholder is not answerable for the acts of another in relation to the partnership concern.^d And, in conformity with this decision, where by a railway act it was declared that the shares in the undertaking, or the joint-stock and funds of the company, should to all intents and purposes be deemed personal estate, and be transmissible as such, and should not be of the nature of real property; it has been recently held that the shares of individual property were not an interest in land, and therefore might be sold by a verbal contract; and *semble*, that this would have been so, even if the act had contained no such clause. The leaning of the Courts, both of law and equity, is now to hold all shares in companies to be personal estate, and to be transferrable accordingly.

But the great question which has recently arisen on the transfer of shares, is as to how far the holder can divest himself of liability as a shareholder in the company by such transfer.

Now it seems quite clear that where an act of parliament, or a charter of incorporation, has been obtained, the shares may be transferred in the mode recognized by such act or charter. In the case of *The Huddersfield Canal Company v. Buckley*,^e by a Navigation Act, the shares were declared to be vested in the subscribers, their executors and assigns, with power to the sub-

^a We propose in the course of the present volume to consider from time to time the cases relating to Joint Stock Companies, chiefly with reference to the questions which arise most frequently in practice. We trust that this proposed series of articles may form materials for a complete treatise on this subject.

^b *Buckridge v. Ingram*, 2 Ves. jun., 652; and see *Earl of Portman v. Baker*, 1 B. & C. 699.

^c *Townsend v. Ash*, 3 Atk. 336.

VOL. XI.—NO. 588.

^d *Brent v. Brent*, 2 Yo. & Jer. 268.

^e 7 T. R. 36.

scribers to assign their shares; and a committee to be appointed under the act were authorized to make such calls to the proprietors of shares at such time as they should think fit; and it was held that an original subscriber was not liable for any call made by the committee after assigning his share. "After assignment," says Lord *Kenyon*, C. J., "the assignees hold the shares on the same conditions, and are subject to the same rules and orders, as the original subscribers, and are to all intents and purposes substituted in the places of the original subscribers."

It has however been held, that where an act prescribes certain forms in the transfer of the company's shares, that unless they are strictly complied with, the shares remain in the order and disposition of a bankrupt proprietor, the ordinary mode of transfer not constituting an equitable mortgage;¹ and where the mortgagor is a trader, and the shares are personal estate, the transfer must be made in the books, in order to render the security valid against his assignee in bankruptcy.²

It seems also clear that though there be no act of parliament, or charter of incorporation, a share in a company established for a proper object may be transferred. Thus in the case of *Nockels v. Crosby*,³ where a scheme for establishing a tontine was put forth, stating that the money subscribed was to be laid out at interest, and to enure to the benefit of the survivors, the subscribers were to be governed by the regulations of the directors, and at the end of a year, shares were to be issued and to be transferrable, it was held that this undertaking was not within the Bubble Act, 6 G. 1, c. 18. *Bayley*, J., assuming that this was a company established for a laudable object, distinctly recognized the right to render the shares transferrable, and thus to shift the responsibility to the assignee. It would also seem that the directors of a company may relieve themselves from responsibility by taking the proper means. In *Doubleday v. Muskett and another*,⁴ the defendant having with others consented to become directors of a projected water company, for which an act of parliament was to be obtained, it was held that though no act of parliament was obtained, and the project failed, they were responsible for works

ordered at subsequent meetings of the proprietors, which the defendants did not attend. *Tindal*, C. J., said, "having been directors in 1825, what have they done to divest themselves of that character? It was in their power to have declared off, but if they omitted so to do, they are in the condition of partners, who, having quitted a business, allow their names to remain on a door, or otherwise hold themselves out to the world as responsible."⁵ And *Park*, J., said, "the last question is, whether they ever divested themselves of the character of directors. There is no evidence whatever to shew that they took steps for this purpose, or to absolve themselves from the liability they had incurred."

But the part of this subject most in doubt is, whether a person who has not signed the deed, and is a mere holder of scrip, may relieve himself of all liability by parting with his scrip. As to signing the deed, it is clear that liability may be incurred without taking this step.

Thus it is not necessary that directors should actually sign the deed of settlement to establish their liability. "If they consented to be directors, or belonged to the board of management, they are responsible for the proceedings of the board:"⁶ and in *Maudsley v. Le Blanc, Esq., Bayley*,⁷ J., said, "I shall take it for granted that the defendant would never have continued to act as a director so long, without he had executed the deed. It appears to me that he is liable as a partner. He was at the meetings of the directors acting from time to time, and went to see the works in progress."

And the same rule has been laid down with respect to shareholders in two cases: The first of these is *Perring v. Hone*, which is a very important one. In this it was held first by *Best*, C. J., at *nisi prius*,⁸ and afterwards by the full Court of Common Pleas, that a person having received scrip receipts, but sold them before the deed for the formation of the company was executed, was liable as a partner in the concern, although he never signed the deed. "It has been contended," said *Best*, C. J., "that none were partners but they who signed the deed. But all who subscribed to the partnership fund must be taken to have assented to the deed,—an assent which the plaintiffs countenanced by afterwards attempting to dispose of their interest. Even

¹ *Ex parte Lancaster Canal Navigation*, 1 Dea. & Ch. 411.

² *Nelson v. London Assurance Company*, 2 Sim. & Stu. 292.

³ 3 B. & C. 814.

⁴ 7 Bing. 111.

⁵ *Per Bosanquet*, J., 7 Bing. 118.

⁶ 2 C. & P. 409.

⁷ 2 C. & P. 401.

⁸ 6 Bing. 28.

if there had been nothing in the deed to bind them, they could only get rid of that interest by regular notice in the Gazette; but it was provided by the deed that notice should be given to the directors of the person to whom it was proposed to make a transfer. Without such a provision any person might hold a share, so long as it was advantageous, and then dispose of it to a pauper, cheating the creditors and his co-contractors. But a party who has once engaged in a concern of this nature cannot so easily divest himself of his liability."

It would seem, therefore, from this case, that a person cannot get rid of his liability by simply parting with his scrip receipt; but that if he signs the deed, and transfers his share in the way prescribed by it, he can relieve himself of his liability.

In the subsequent case of *Ellis v. Schmaeck*,^o the rule laid down in *Perring v. Hone* was adhered to. There the defendants had purchased the scrip of a mining company originated in fraud, and had attended one meeting of the company; but they never signed the partnership deed, were innocent of the fraud, and transferred their scrip before the plaintiff commenced an action for goods furnished to the company after the defendants had purchased their scrip; and it was held by the Court of Common Pleas that they were liable for goods supplied to the company. They did not get rid of their liability by the mere transfer of their scrip.

The cases of *Hone v. Perring*, and *Ellis v. Schmaeck*, have, however, been a good deal shaken by the case of *Fox v. Clifton*,^o which was very much considered by the present learned Chief Justice of the Common Pleas. In that case a prospectus was issued for a distillery company, with a capital of 600,000*l*, and 1200,000 shares, and to be conducted pursuant to the terms of a deed to be drawn up. No more than 75,000 shares were ever allotted, only 2300 persons paid the first deposit, only 1106 the second, and only 65 signed the deed; and the directors after the term for paying the second instalment had elapsed, advertised that persons who had omitted to pay had forfeited their interest in the concern; and it was held that an application for shares and payment of the first deposit did not constitute a partner one who had not otherwise interfered in the concern; and that the insertion of his name by the secretary of the company, in a book containing a

list of subscribers, was not a holding out as partner. The arguments and judgments in this case, however, turned chiefly on the question of partnership, and the Court declined to give any opinion "as to the divesting of the liability of any of the defendants by the sale of their scrip before this contract was entered into;" so that the question as to whether a holder of scrip can divest himself of his liability by transferring it to another remains undecided.

Perhaps it would be held that if he had taken no part whatever in the concerns of the company, he would be able thus to relieve himself, but if he took any part, or in any way held himself out to the public as a partner, we think the cases warrant us in saying he would be held liable, although he never signed the deed.

It has been very recently decided that a shareholder cannot relieve himself of his liability as to calls on his shares by pleading that he has forfeited them. In debt for calls due from the defendant as a proprietor of shares in the London and Brighton Railway Company, the defendant when under terms of pleading issuably, had obtained a judge's order for pleading. 1. Never indebted. 2. Defendant not a proprietor. 3. That by non-payment of previous calls, he had forfeited his shares before the making of the calls in question. 4. That he had forfeited his shares, and ceased to be a proprietor after the making of the calls in question, and before the commencement of this action. *Talfourd*, Serjt. obtained a rule nisi to set aside this order as to the last two pleas, on the ground that by the railway act, 1 Vict. c. 119, s. 148, it is sufficient for the company to prove at the trial that the defendant was a proprietor of shares at the time of the calls for which the action is brought. The third plea therefore, was unnecessary in addition to the second, and the fourth was inconsistent with the act. *Stephen*, Serjt., for the defendant, contended that it would be hard to deprive him of the power of shewing that he had ceased to be a proprietor before the action commenced, as the company might reimburse themselves by disposing of the forfeited shares. *Sed per Curiam*, the third plea is unnecessary, and the fourth contrary to the spirit and meaning of the act of parliament. The rule must be made absolute.^p

^p *London and Brighton Railway Company v. Fairclough*, 6 Bing. N. C. 270.

NOTES ON PARLIAMENTARY RETURNS RESPECTING THE COURTS OF EQUITY.

SIX CLERKS' OFFICE.

FROM a return ordered by the House of Commons to be printed, 18th Feb. 1840, it appears that each Six Clerk's income, after paying for his office expenses, clerks, porter, and servants, and we know not what else, is about 1,800*l.* a-year. The suitors, therefore, besides paying the clerks and porters of these gentlemen, have to pay into the pockets of these gentlemen themselves an absolutely useless tax of about 11,000*l.* a-year; before they can be allowed to pass the portals of the Court, and to employ the barristers and solicitors in Chancery matters. This tax is over and beyond a tax of 40,000*l.* needlessly paid to the Clerks in Court (*i.e.* paid to them beyond the amount necessary to pay them handsomely for the duties they do).^a *E converso*, therefore, the solicitors in this one quarter of the Court alone have to submit to a drag of 50,000*l.* a-year (perhaps 60,000*l.* or 70,000*l.* a-year), operating to keep away their customers, and to debar them from the free exercise of this portion of their profession. Toll, to this or some enormous extent, is taken by the Six Clerks' Office from all who come to employ them. Setting out of the question for a moment the solicitor's honest duty towards his client, viz. that of protecting him from all improper taxes and impositions in his pursuit of justice—a duty (we are happy for the honour of the body of solicitors to say) which every year sees better fulfilled, and putting this obnoxious impost before the eyes of solicitors in the most selfish point of view we can, it is plain that it is their *interest* to allow no one to take money out of their clients' pockets except themselves and the bar, and to allow the bar to do it only for services rendered,—not for hand-motions and the like. Any solicitor who may look on his clients as those who are to pay black mail to him, if such solicitor there be, must certainly be anxious that he himself should be the only reiver.

The solicitors have the sole keeping of the client's purse, and both honourable duty and selfish interest, therefore, alike combine to prompt them to keep strangers' fingers out of it, without full return got for what is taken out.

With reference to taxation of costs, much light has been thrown on this subject by a return from the masters (printed with the above return) of the number of warrants on leaving bills of costs, and the number of warrants to tax issued by each of the masters during the years 1838 and 1839. In the year 1839, 11,136 warrants for taxing costs were taken out. Some of these—but not many—may be in lunacies and other *ex parte* matters, in which a Clerk in Court does not attend. But we cannot think that much less than three attendances, one with another, can have been charged by Clerks in Court, in one cause with another, *i.e.* one attendance for plaintiff and two for two sets of defendants,—it would very rarely indeed happen that there were not two parties attending one taxation. Say there were two and a half on these 11,136 warrants; if so, the Clerks in Court were paid in 1839, 9,280*l.* for taxation. From Mr. Spence's supplement to his three addresses (note to page 9) it appears that there is an unprinted parliamentary return shewing that one of the Clerks in Court receives nearly one-fifth of the whole income of the office. If so, as two Clerks in Court are not unfrequently in personal attendance on one taxation, one of whom therefore is for the time wasted, five could do all the taxing work of the office; and the income to each from the present fees on taxing alone would be nearly 2,000*l.* a-year each.

The return so long ordered from the Clerks in Court, of the total income of the office, is not yet made.

Mr. Field's calculations in his pamphlet were based on the supposed proportion between the office receipts for taxation and for other business done.

If his proportions are right, and the receipts for taxation were, in 1839, 9,280*l.*, then the whole office-receipts of the Six Clerks' Office in 1839 could not be much under 100,000*l.*; a tax upon justice, or a premium on injustice, so gross that no government, however lethargic, is justified in leaving the matter unattended to. It seems to us a matter which that important body, the solicitors, ought to bring before the legislature by petitions.

^a See Field's observations on the Equity Offices, page 16. From the return as to warrants on taxation, we should guess 60,000*l.* or 70,000*l.*, instead of 40,000*l.*

MASTERS IN CHANCERY.

A return has been made, by order of the House of Commons (printed 30th March, 1840) being an abstract of the Masters' returns under Lord Brougham's Chancery Act, from which it appears that about half of the references pending have been pending above five years! It appears that the average of the Master's attendance in his office is about four hours and a half, or five hours a-day. Some Masters state it as high as six hours; but as we know well by experience that the Masters are very often not there till nearly or quite eleven o'clock, and as the six hours must be from ten till four, we apprehend that the attendance is calculated on the returns of warrants taken out in the warrant-book, and not on the actual time spent by the Master in his chair of office. At any rate this return is decisive against increasing the number of Masters. The Masters, to do their work well, must be fully employed, and till they are fully employed six hours a day (now they are a considerable part of almost every day sitting in their offices doing nothing), they will be improved by giving them more work to do.

Owing to Lord Henley's state of mind, much inconvenience to the suitor may be expected. There seems no power without an act of parliament of removing him, and appointing a successor; so clumsily was Lord Brougham's Chancery Bill constructed!

The disgraceful length to which references are protracted (in Michaelmas Term, 1839, 1,042 of those pending had been pending above five years), calls for some pungent legislative interference. At the same time, with reference to these, a large allowance must be made for many of them being receivers' accounts, &c., which in their nature must be kept pending. The tendency of all the new facts which come out relative to the state of the equity business, is to shew that the evil of the delay in hearing *opposed* causes, and of the arrears of those causes in the cause paper (the whole paper is composed of them)—great and glaring as it is—is by no means the great evil of the Court. The delays of the offices affect *all* causes, consent and short (which form the principal body of causes in the Court), as well as opposed. This most important fact should never be forgotten.

EQUITY EXCHEQUER.

New returns respecting the Equity Exchequer have been printed by an order of the House of Lords, of 25 Feb. 1840. It ap-

pears that the average of bills filed per annum has fallen from 250 a-year to below 200. From another House of Lords' return, printed 20th March, 1840, it appears that fourteen appeals from the Equity Exchequer were preferred to the House of Lords in four years. According to the ratio causes heard in Chancery bear to those heard in the Exchequer in the same four years, there should have been two hundred, but it was really only six! These returns alone make the question of continuing the Exchequer as an independent Court without an appeal except to the House of Lords, a question which cannot be argued.

LORD BROUGHAM'S JUDGMENTS WHEN CHANCELLOR.

Lord Brougham has had two returns made (at least we suppose they are his), respecting the number of motions and petitions heard by him during his Chancellorship, and of the appeals from his decisions (ordered to be printed 6th and 17th March, 1840). These returns have a purely personal bearing, and are of no value as regards the great questions respecting Chancery Reform, to which alone we should wish to see the public mind directed. We therefore say nothing about them here.

NEW BILLS IN PARLIAMENT.

SEDUCTION AND BREACH OF PROMISE OF MARRIAGE.

This bill proposes to give summary power to Justices of the Peace in special sessions assembled, in certain cases of seduction or breach of promise of marriage. It recites that from the expenses attendant upon civil actions for loss of service, or breach of promise of marriage, the poorer classes of the community are unable to avail themselves of such remedies; and it is therefore expedient to establish some cheap and summary process whereby such evils should be remedied. The enactments are,

1. That from and after the passing of this act it shall be lawful for any woman who, having been seduced by any person under promise of marriage, is or has become incapable of following her usual occupation, or for any parent or guardian, master or mistress, who, by the seduction of his or her daughter, ward or servant, by any person, shall have been aggrieved, and is or has been deprived of the temporary service of such daughter, ward or servant, to make application to any justice of the peace for any county, riding, division or place, wherein the person so

offending as aforesaid shall be found; and such justice of the peace, having made due inquiry into such complaint, shall if he shall think fit, having first taken the information of the complainant on oath, issue a summons to the party charged with such offence to appear at the next special sessions to be held for the adjudication of such cases, as hereinafter enacted: Provided always, that fourteen days at least shall intervene between the issue of the summons and the day appointed for hearing the case at the special sessions.

2. That the person charged with such offence as hereinbefore mentioned shall have notice in the said summons to come prepared with all necessary evidence to rebut the charge contained in such summons; and at the hearing of all such cases, proof of the fact charged against such person shall only be established on the evidence of two credible witnesses at the least, whereof the woman seduced in either case may be one.

3. Eight special sessions a-year to be appointed for the hearing of such cases.

4. That the justices of the peace assembled at such special sessions, having heard all the evidence adduced on either side shall adjudicate thereon, either by acquitting the person so charged as aforesaid, or by inflicting such penalty or punishment as is hereinafter enacted; and such judgment shall be final and conclusive to all intents and purposes whatsoever.

5. Party not appearing upon summons, the case to be decided in his absence.

6. That if the justices of the peace so assembled shall consider the charge fully proved against the person accused, it shall be lawful for them to impose a penalty not exceeding thirty pounds, together with the costs of the proceedings, either to be paid in one sum, or by such instalments, not exceeding six in number, as to the said justices shall seem fit: Provided that the times specified by the justices for the payment of such instalments, shall not in the whole exceed eighteen months from the period at which the adjudication shall have taken place.

7. That such sum or sums shall in case of breach of promise of marriage be paid to the complainant, and in cases of seduction, to the party complaining, for the use of any offspring the fruit of the illicit connection, or to such other person or persons, for the said use, as to the said justices shall seem fit.

8. In default of payment, distress may be issued, and should it appear to the justices of the peace that there are no effects, they are empowered to commit.

9. Prosecution of offences under this act to be within eighteen calendar months.

10. Convictions to be filed with clerk of peace. Clerk to the magistrates to make an entry of such cases.

[The schedule contains the form of conviction.]

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. I.

3 Vic. c. 9.

PARLIAMENTARY PAPERS.

An Act to give summary protection to persons employed in the publication of parliamentary papers. [14th April 1840.]

Proceedings, criminal or civil, against persons for publication of papers printed by order of parliament, to be stayed, upon delivery of a certificate and affidavit to the effect that such publication is by order of either House of Parliament.—Whereas it is essential to the due and effectual exercise and discharge of the functions and duties of parliament, and to the promotion of wise legislation, that no obstructions or impediments should exist to the publication of such of the reports, papers, votes, or proceedings of either House of Parliament, as such House of Parliament may deem fit or necessary to be published: And whereas obstructions or impediments to such publication have arisen, and hereafter may arise, by means of civil or criminal proceedings being taken against persons employed by or acting under the authority of the Houses of Parliament, or one of them, in the publication of such reports, papers, votes, or proceedings; by reason and for remedy whereof it is expedient that more speedy protection should be afforded to all persons acting under the authority aforesaid, and that all such civil or criminal proceedings should be summarily put an end to and determined in manner hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for any person or persons who now is or are, or hereafter shall be, a defendant or defendants in any civil or criminal proceeding commenced or prosecuted in any manner soever, for or on account or in respect of the publication of any such report, paper, votes, or proceedings by such person or persons, or by his, her, or their, servant or servants, by or under the authority of either House of Parliament, to bring before the court in which such proceeding shall have been or shall be so commenced or prosecuted, or before any judge of the same (if one of the Superior Courts at Westminster,) first giving twenty-four hours notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the Lord High Chancellor of Great Britain, or the Lord Keeper of the Great Seal, or of the Speaker of the House of Lords, for the time being, or of the Clerk of the Parliaments, or of the Speaker of the House of Commons, or of the Clerk of the same House, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceed-

ing shall have been commenced or prosecuted, was published by such person or persons, or by his, her, or their servant or servants, by order or under the authority of the House of Lords or of the House of Commons, as the case may be, together with an affidavit verifying such certificate; and such court or judge shall thereupon immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this act.

2. *Proceedings to be stayed when commenced in respect of a copy of an authenticated report, &c.*—And be it enacted, that in case of any civil or criminal proceeding hereafter to be commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes, or proceedings, it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the Court or Judge such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such copy, and the Court or Judge shall immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this act.

3. *In proceedings for printing any extract or abstract of a paper, it may be shewn that such extract was bona fide made.*—And be it enacted, that it shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published *bona fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants.

4. *Act not to affect the privileges of Parliament.*—Provided always, and it is hereby expressly declared and enacted, that nothing herein contained shall be deemed or taken, or held or construed, directly or indirectly, by implication or otherwise, to affect the privileges of Parliament in any manner whatsoever.

FURTHER RE-ADMISSION OF ATTORNEYS.

Last day of Easter Term, 1840.

Thomas Brown, 14, Little Russell Street, Drury Lane; and 25, Mitre Street, Lambeth.

[This name has been added to the list by a Rule of Court, dated 22d April (the term having commenced on the 15th) With submission to the learned judge who made the rule, we beg to observe that the object of giving a term's notice may be defeated by this indulgence; and we submit the practice should not be relaxed without very strong reason. ED.]

LAW AS TO MARRIAGES ABROAD WITHIN THE PROHIBITED DEGREES OF AFFINITY.

Our readers will recollect that in January last we called their attention at some length to the uncertain state of this law, and to the necessity of its being placed on a clear and well-understood footing. Our observations have, we believe, given rise to a petition to the House of Commons from the Liverpool Law Society, which we print below, and we understand other petitions are likely to follow. Measures are also, we believe, contemplated by parties affected by the prohibitions of the act of 5 & 6 W. 4, c. 54, to procure, if possible, the repeal of those prohibitions.

The petition states—

"That notwithstanding the act of parliament passed in the year one thousand eight hundred and thirty-five, declaring void future marriages between persons within the prohibited degrees of affinity, which were by the Canon Law voidable only, it appears to be the opinion of civilians and common lawyers, that marriages abroad between English subjects within such degrees of affinity are valid, as respects property in this country, whenever their removal abroad is *bona fide* with the intention of remaining there; and many are of opinion that such marriages abroad, without any intention of permanent residence there are also valid; and in consequence of such opinions marriages are constantly taking place abroad between English subjects within the prohibited degrees of affinity (more particularly between widowers with families and their deceased wives' sisters;) That whilst the uncertainty of the law leaves open to objection the title of the offspring of such marriages to the estates and properties of their parents in this kingdom, it has not prevented, but rather given encouragement to them, and must ultimately be productive of great uneasiness, expence, and litigation, to the children, and to persons who may claim property as purchasers from them.

"That at the time of the passing of the aforesaid act the public was led to expect that some ulterior measure would be brought in with reference to marriages within certain prohibited degrees of affinity, and that the aforesaid act was a temporary measure only; but five years have now elapsed without any such measure being proposed, and parties whose offspring are thus affected by the law feel themselves in a position which renders it difficult for them to petition for any legislative interference.

"The petitioners pray the house to take into consideration the present state of the law with regard to marriages between parties within the prohibited degrees of affinity, and to adopt such measures as to the house shall seem fit."

EXEMPTION OF ATTORNEYS FROM SERVING ON CORONER'S JURIES.

WE recently noticed the question raised by Mr. Wakley, one of the coroners for Middlesex, regarding the supposed liability of attorneys to serve as jurymen on Coroners' Inquests. (see 19 L. O. 466.) It appears that amongst the attorneys summoned on such inquests, were several members of the Incorporated Law Society, and the attendance on such summonses being peculiarly inconvenient to solicitors, and injurious to the interests of their clients, the Committee of Management submitted a case to the Attorney and Solicitor General. The queries on the case, and the opinion of the learned counsel have been placed up in the Hall of the Society for the information of the members, and the following are copies:

1. Whether attorneys and solicitors of the Superior Courts, are liable to serve as jurymen on coroners' Inquests? and if so to what penalty or punishment do they subject themselves by refusing to serve?

2. In case you should be of opinion that they are not liable so to serve, what course should be taken to establish the privilege, and to put a stop to the practice of causing attorneys and solicitors to be summoned? and will it be necessary that an attorney or solicitor who may be summoned should personally attend the inquest and claim the exemption, or will it be sufficient to send to the coroner notice of such exemption? or, must a writ of privilege be sued out on each occasion? or what other mode of proceeding do you recommend to be adopted?

1. We are of opinion that attorneys and solicitors of the Superior Courts are not liable to serve on coroners' inquests.

2. We think the best mode of trying the question, would be for an attorney summoned on a coroners' Inquest, to attend and claim his privilege; and if he should be fined by the coroner to contest the validity of the fine in the Court of Exchequer.

Temple,
April 19th, 1840. }

J. CAMPBELL.
THO. WILDE.

WE understand that the Coroner has given directions to his summoning officer, not to call for the attendance of attorneys in future.

THE FURTHER REGULATIONS RELATING TO THE POSTAGE OF LETTERS.

THE completion of the Penny Postage plan, 1st by stamped labels; 2d. by stamped envelopes; 3d. by stamped paper; and 4th. by pre-payment, will come into operation on Wednesday the 6th May. The following

regulations are extracted from the Treasury Warrant, published in a supplement to the London Gazette of 24th April.

"The Lords Commissioners of her Majesty's Treasury have determined that all letters and printed votes and proceedings of the Imperial Parliament, posted in the United Kingdom, may be transmitted by the post, free of postage, if duly stamped, or having a stamp affixed thereto, in manner hereinafter provided.

It is then ordered "that all letters, printed votes, and proceedings of the Imperial Parliament which, on and after the 6th May, shall be posted in any town or place within the United Kingdom, shall, if written on *Stamped Paper*, or enclosed in *stamped covers*, or having a stamp or *stamps affixed* thereto, pass by post free as after-mentioned."

The warrant then goes on to direct that the stamps shall be of equal amount to the rates of postage fixed on letters by the warrant of 27th December, if prepaid, and the rates on parliamentary votes &c., fixed by the warrant of 31st January,

Then it is directed that there shall be affixed on such letters, votes &c. "such a number of adhesive stamps, as alone, or in combination with the stamp on such letter or packet, or the envelope or cover thereof, will be equal in amount to the rates of postage, to which such letters &c. would be liable under the warrants of 27th December, and 31st January.

Letters &c., posted without stamp and without being pre-paid, shall be charged according to the former warrants, namely: (double the amount of rates when pre-paid.)

Letters &c. having less stamps than the rate of postage to which they are liable, will be charged a postage of double the amount of the difference, if pre-paid.

It is provided that it shall be optional to pre-pay letters, &c. in like manner as before the present warrant.

In case any stamp shall be placed on a letter, or votes, &c. which shall have been used before, the same shall have no effect.

CONSTRUCTION OF THE STATUTE OF GAMING.

I beg to solicit the assistance of my fellow correspondents on the circumstances of the following peculiar case:—

A. lost at play with B., C., and D., proprietors of a common gaming-house, from time to time, a considerable sum of money. One evening, having been unsuccessful, he staked money in his possession belonging to another person, which he likewise lost. The next morning he waited on B., and stated to him the fact that part of the money he lost on the preceding evening did not belong to him, but was the property of another person, entrusted to him to settle an account, and he required the proprietors to advance him, on his own personal security, a sum equal to that he lost on the preceding evening not belong-

ing to him, informing them at the same time the consequences of a refusal would be a prosecution. Although at first *B.* objected to the loan, ultimately he consented on behalf of himself and his co-proprietors to advance the sum required, on *A.* giving an I. O. U. for the amount, payable on demand. Accordingly the memorandum was drawn up in these words, and signed by *A.*: "I. O. U. *B., C., and D.,* the sum of £*1,000*, cash borrowed this day, to be repaid on demand, and dated *1st day of May 1868.*" *A.* never after this transaction frequented the gaming-house, and, in fact, has never played since that period. It having come to the knowledge of *B., C., and D.,* that *A.* is in affluent circumstances, they insist upon immediate payment of the note, and threaten, in default, legal proceedings. Such is the case. Now let us see what provision the legislature has provided respecting it.

By the statute 7 Anne, c. 14, s. 1, it is enacted that "all notes, &c. where the whole or any part of the consideration shall be for money, &c. won by gaming, or for repaying any money knowingly lent to play with, or lent at the time and place of such play, to any person that shall play." The question in the present case arises on the former part of the section, as to whether the consideration of the note given by *A.* is to be considered for money won by gaming. It is quite clear that the I. O. U. was not given for repaying any money knowingly lent to play with, if *A.* never played with *B., C., and D.,* or with any other persons after the transaction which led to the giving of the note. If *A.* had played with the money soon after the advancing, that I apprehend would be sufficient to have successfully resisted the demand now made; nor was the money lent or advanced at the time or place of playing, but at the private residence of *B.* It is difficult to state the true construction the Courts put on similar cases as the present, nor have I been successful in finding any case exactly in point; but I think the following cases will shew the principle the Courts have established and follow. *Robinson v. Blair*, 2 Bur. 1077, decides that money lost at play is recoverable by the law of England; but by *Thistlewood v. Cracroft*, 1 M. & S. 500, it appears that money fairly lost at play cannot be recovered back in an action of debt for money had and received, but only in an action founded on the statute. *Boyne v. Bayton*, Strange 1155; *Barjeau v. Walsley*, *ibid.* 1249; *Alcinbock v. Hall*, 2 Wils. 309; and *Wettenhall v. Wood*, 1 Esp. N. P. C. 18, establishes that the statute of Ann c. 14 only avoids securities for money won or lost at play, and does not extend to cases of mere loans with any security taken; and that 16 Car. 2, c. 7, s. 3, only avoids contracts for money lost at play; consequently an action for money lent may be maintained, although it should appear that the money lent was lent by the plaintiff to the defendant for the purpose of gaming with. The statute of 12 G. 2, c. 28, s. 3; 18 G. 2, c. 34; 13 G. 2, c. 19; 29 G. 2, c. 7, appear to have reference to the law relating to gaming.

In conclusion, I hope your correspondents will give this case their best attention, not only in consequence of its importance, but the practical point the circumstances involve. The main question is, can *A.* successfully, under the foregoing circumstance, make any defence, and what, to the claim set up by *B., C., and D.* under any established law, or the gaming acts? W. J.

RE-ADMISSION WHERE NO CERTIFICATE TAKEN OUT.

Sir,

THE doubtful state of the law upon a subject materially affecting the interests of many members of the profession, induces me to call attention to the point. The question to which I refer is, whether the admission of an attorney becomes void by his neglecting to take out his certificate for one year from the date of such admission, or whether the certificate may be taken out at any time beyond such period without a previous re-admission being required.

The rule hitherto acted upon in the common law offices and sanctioned by several decisions (amongst others those of *Ex parte Jones*, 2 Dowl. 451; and *Ex parte Marshall*, 6 Dowl. 526) was, that if no certificate had been taken out since admission, it might be taken out at any time, although more than a year had elapsed, and no re-admission would be required, but that if a certificate had been taken out which the party afterwards discontinued for a twelvemonth, his admission became void, and he could not resume his practice without being re-admitted.

This construction seems to depend upon the words of the statute 37 Geo. 3, c. 90, s. 31, which, in dictating the terms of re-admission, directs that it may be "upon payment of the arrears of duty accrued due since the expiration of his last certificate," thereby excluding those cases in which no certificate has been taken out. This view of the case has, however, been materially shaken by the recent decision in *Wilton v. Chambers*, 7 Ad. & El. 524, and 2 Nev. & P. 392, in which, although the precise point above referred to was not in question, it was decided that a neglect to take out a certificate for a year after re-admission rendered such re-admission void, so as to involve the necessity of a further re-admission before the party could be legally qualified to practise; and it may be inferred from various parts of the judgment that the Court would have come to the same conclusion in the case of an original admission.

It is unnecessary for me to advert particularly to the great inconvenience that must result from these conflicting decisions,—an inconvenience which is in future likely to be more severely felt than ever, it being now the practice with most young men to go up for examination and admission as soon as their articles have expired, although in the majority of cases

* See the Report in 15 L. O. p. 123.

they have no immediate intention of taking out their certificates or entering into business, their object being merely to get over what is familiarly termed the "bother" of the examination.

The effect of the decision in *Wilton v. Chambers*, if the inference I have drawn from that case be just, will be to inflict a severe tax in the shape of certificate duty upon many who would otherwise defer such a payment until they actually commenced practising, or, in the event of their not submitting to this annual infliction, it will throw upon them the expence and delay of a re-admission, and possibly also, under some future Rule of Court, of a *re-examination*.

Under these circumstances, I submit that a declaratory rule, both prospective and retrospective, is imperatively required upon this point, which rule I apprehend the Judges have power to make under their general jurisdiction, independently of legislative enactment.

P. J. K.

SELECTIONS FROM CORRESPONDENCE.

RIGHT OF ATTORNEYS TO SEATS IN COURT.

Sir,

The desire of benefiting the profession generally, alone prompts me to write to you on so trivial a subject as that of the present letter. I have, with several other members of the profession lately experienced very great inconvenience from the conduct of policemen; and others stationed at the entrance of the Courts during the time of trials of importance, and preventing attorneys from entering the Court although on urgent business, on the allegation that the Court was full. I really consider that some means should be taken to distinguish solicitors, by carrying out a plan proposed some time since, which gained almost general sanction, by the means of your widely circulated paper. The plan proposed was, that every solicitor should be furnished with a gown, similar to those worn at the colleges, which should be worn in the Courts; of course at the option of the party. There is a rule to this effect at present in being, but that, as you are aware, is not attended to. I leave this proposition in the hands of your readers, and trust they will concur with me in the adoption of the remedy suggested, or of one equally efficacious.

A SOLICITOR.

MUTUAL DUTIES OF ATTORNEYS AND ARTICLED CLERKS.

Sir,

On looking over some previous numbers of the "Legal Observer," I noticed a letter of complaint from an articulated clerk in the country, backed by the echoing voices of others in like circumstances with himself. He complains that instead of being properly instructed, he is positively kept ignorant of the law and its practice. In the note which you have appended, you say you think the number is ex-

aggerated; supposing this to be the case, still it is no reason for altogether neglecting the subject; but I am afraid the statement your correspondent makes is too true. Next you say, "that it is very probable that whilst in some instances the covenants of the attorney are not strictly performed, those of the articulated clerk, in an equal proportion, are unfulfilled." If so the breach of covenant would be equal on both sides, and neither party could have cause to complain, or would be likely to do so, at least the clerk would not. You then say, "there is much to be said on both sides of this, as of all other questions." That may be, but more certainly in behalf of the articulated clerk, for if any injustice exists at all, we may be sure the old adage will be exemplified—the weakest will go to the wall—and the clerk will be the greater sufferer. But this is not the only cause of the injustice that is indisputably done to the articulated clerk. The attorney thinks, and often rightly, that it is to his own interest to keep him in a state of ignorance. How can this be (it may be asked); one would suppose that the more clever the clerk, the more useful he would be to his master? True, but the attorney looks with a jealous eye upon his attainments; he fears that his clients will be induced to leave him, and go to his clerk, when he shall have served his articles. He does not like to hear him praised for his cleverness, his skill in business. A sort of rivalry already exists between them—he fears his clerk will turn the weapons with which he himself has armed him against his master, by rendering his clients disaffected, and doing his best to bring them over to himself. The opportunities for this are numerous and tempting, and these suspicions are not always unfounded; and when that is the case, when there is reasonable ground for them, the attorney is certainly justified in acting as he does.

But where the articulated clerk is honourable, and desirous of improving in his profession, the case is altered, and lamentable injustice is done him. This is the case sometimes, and I hope, for the honour of articulated clerks, frequently. The desideratum is, to take away the suspicions of the attorney, where they are unfounded, and to establish a perfect mutual confidence between him and his clerk. By doing this the greatest advantages would follow; the attorney would have a zealous and useful clerk, and the clerk would be fulfilling the best interests both of his master and himself. But how are the tares to be separated from the wheat? How are the insidious and undermining to be distinguished from the honorable and upright? How is justice to be done to all? The remedy which your correspondent proposes, that of bringing the grievance before the public eye, would obviously be insufficient; something more effectual must be adopted to convert suspicions so injurious to both parties into that confidence, the good effects of which are so much to be desired.

H. R.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1840.

[Continued from Vol. XIX. p. 503.]

<i>Clerks' Name and Residence.</i>	<i>To whom articulated and assigned.</i>
Kersterman, William, 27, Great Russell St.; and Langport, Eastover, Somerset.	Nicholas Broadmead, Langport, Eastover.
Kingdon, Thomas, Exeter; Sidmouth; and 30, Ely Place.	Edward Harley the younger, Bristol; assigned to Alfred Lester, Sidmouth.
Lavers, William, the younger, Plymouth.	Thomas Phillips, Plymouth.
Lewis, Edward, Manchester.	James Blackledge Brackenbury, Manchester.
Long, John, 4, Craven Buildings, Strand.	Thomas Jones the younger, Millman Place, Bedford Row.
Law, James Charles, 9, Great Ormond Street, Queen Square; and Kidlington, Oxford.	Daniel Godfrey, Abingdon.
Merewether, Herbert Walton, 7, Whitehall Place.	Thomas Adlington, Bedford Row.
Morgan, Thomas Henry, 3, Newman's Row, Lincoln's Inn Fields; Gloucester; and 1, Garden Place, Lincoln's Inn Fields.	Richard Helps, Gloucester.
Melland, William, 6, White Conduit Terrace, Islington; Brampton; and Albany Street, Regent's Park.	John Cutts, Chesterfield.
Mathews, Richard Gardner, 26, Upper Park Street, Barnsbury Park; and Cold Arbour Square, Commercial Road.	Alexander Mitchell and Henry Hill, New London Street.
Matthews, Richard, 9, Fitzroy Street, Fitzroy Square; and Rochester.	Edward Twopeny, Rochester.
Mitford, Edward Reveley, Bayswater.	John Adams Tilleard, Old Jewry.
Mansell, Frederick, 29, Coleman Street; and Berwick-upon-Tweed.	Edward Elliott, Berwick-upon-Tweed.
Maister, John, York.	Jonathan Ward, Stokesley, York.
Niblett, Charles William, Farnham, Surrey.	James Russell, York.
Norton, William Hebeley, 1, New Street, Bishopgate Street.	Charles Niblett, Farnham, Surrey; assigned to John Rand, Guildford and Farnham.
Nicholl, Frederick Iltid, 9, Portland Place.	William James Norton, New Street, Bishopgate.
Ord, Charles Ovington, 39, Upper Stamford Street; and York.	Robert Wheatley Lumley, Carey Street.
Pullen, James Thomas, Rose Cottage, Grove End; and 7, Holloway Terrace, both in Holloway.	Henry Clarke, Guisborough, York.
Perkins, Thomas, 12, Clerkenwell Green; and Warwick.	Robert Byrom Chambers, Austin Friars.
Prothero, Thomas, 181, Prospect Place, Edgware Road.	John Lampray, Warwick.
Paterson, Robert, 46, and 17, Gloucester Street, Queen's Square.	John Hill, Welbeck Street.
Pallet, James, Edgbaston; and 3, Wilmington Square.	George Marshall, Berwick-upon-Tweed.
Poole, Francis, Barnard Castle, Durham.	John Wilkes Unett, Birmingham.
Reed, Thomas Lancelot, 5, Norfolk Street, Strand; Ixworth, Suffolk; and 44, Southampton Buildings, Chancery Lane.	John Unett, Birmingham.
Rowley, Thomas Butler Welch, 15, Great James Street, Bedford Row; Lancaster; and Manchester.	Richard Barnes, Barnard Castle.
Rodgers, Charles, New Sleaford, Lincolnshire.	Sturley Nunn, Ixworth, Suffolk; assigned to Henry Mainisty, King's Road, Bedford Row.
Roberts, Richard, 2, Wells Street; Gray's Inn Road; and Birmingham.	Thomas Lamb, Lancaster.
Sumpter, William Richard, 17, Upper North Place Gray's Inn Road.	William Foster, New Sleaford, Lincoln.
	William Palmer the elder, Birmingham.
	Charles Pestell Harris, Cambridge; assigned to Frederick Barlow, Cambridge.

. The remainder of the list will be given in the next Number.

SUPERIOR COURTS.

Lord Chancellor's Court.

CHARITIES.—APPEAL.

No appeal lies to the Lord Chancellor against an order made by the Master of the Rolls on a petition presented under the act of the 52d of George 3, c. 102.

This was an appeal from an order made by the Master of the Rolls, in the matter of the *Royston Grammar School*, upon a petition presented under the statute 52 G. 3, c. 102, commonly called Sir Samuel Romilly's act, entitled "An Act for the Regulating and Securing of Charitable Donations." As Mr. Wigram was opening the appeal, Mr. Richards took a preliminary objection, and submitted that the act, by its terms, prohibited an appeal to this Court from an order of the Master of the Rolls. By the fifth section of the act "it shall and may be lawful for any two persons or more interested in such charity or charitable donation to present a petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or Master of the Rolls for the time being, or the Court of Exchequer, complaining thereof (that the charity is not registered) and they are hereby required to hear such petition in a summary way, and upon affidavits or such further evidences as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such application and proceedings as to him or them shall seem fit; and which order shall be final and conclusive." Any of the three Courts, viz., this Court, the Rolls, or the Court of Exchequer, had power to determine and make a final order in a summary way, which was intended to save time and expense. The Court of Exchequer being put in the same position as the Rolls, and there being in no case an appeal from the Exchequer to this Court, so in this matter no appeal was intended from the Rolls, except to the House of Lords, to which an order made by any of the three Courts might be appealed.

The matter stood over for inquiry and consideration; and being again mentioned, on a subsequent day—

The Lord Chancellor said, on looking carefully into the act he was of opinion that the intention of the legislature was to prevent a double appeal. The Court of Exchequer was one of the Courts to which a petition might be presented, and, as there was no appeal from an order of that Court except to the House of Lords, so it was intended to give but the like appeal to any order made under that act by this Court or by the Master of the Rolls. The words "final and conclusive" appeared to support that construction of the act.

In re Royston Grammar School.—At Westminster, April 22 and 24, 1840.

Queen's Bench.

[Before the Four Judges.]

PRIVILEGE OF PARLIAMENT.

Rule granted under 3 Vict. c. 9, to stay proceedings in an action of libel, brought in respect of a publication certified by the speaker to have been made by the order and under the authority of the House of Commons.

Quære, whether the provision in the statute which required twenty-four hours notice of motion to be given to the plaintiff, was intended to enable him to shew cause against the granting of the rule, or only to prevent him from incurring other needless expense.

The act applies to a case where a defendant has allowed the plaintiff to sign judgment by default against him.

Mr. Wightman moved for a rule to stay the proceedings in this case. This was an action brought by the plaintiff in respect of the publication by the defendants under the orders of the House of Commons, of the report of the Inspectors of Prisons. The application was made under the 3 Vict. c. 9, entitled, "An act for giving summary protection to persons employed in the publication of parliamentary papers." That act declared that it should be lawful for the persons that then were or thereafter might be defendants in actions for libel for the publication of reports &c. printed and published by them by or under the authority of either House of Parliament, to bring before the court where such action was commenced or any judge thereof, first giving to the plaintiff twenty-four hours' notice of such intention, the certificate of the Lord Chancellor, the Lord Keeper, or the Speaker or the Chief Clerk of either House of Parliament, stating that the report &c. in respect whereof the action was brought, was a publication made by such person by or under the authority of one of the Houses of Parliament, together with an affidavit verifying such certificate; and such court should immediately stay such proceedings, and the same should be deemed finally put an end to and determined by virtue of that act. The declaration here shewed that the action was brought in respect of an alleged libel which was published by the defendants in a certain book called the Report of the Inspector of Prisons, and the affidavits and certificate of the Speaker, shewed that such publication had been made by the defendants under the order of the House of Commons, so as to bring the case within the provisions of the statute.

The speaker's certificate, which was in the following terms, was then put in and read:—

"I, the Right Honourable Charles Shaw Lefevre, Speaker of the House of Commons, by authority of and in pursuance of a statute passed during the present year of the reign of our Sovereign Lady Queen Victoria, intituled, 'An act to give Summary Protection to Persons employed in the Publication of Parliamentary Papers,' do hereby certify, that the book and paper respectively mentioned in the declaration in this cause, and therein respectively described

as a book of 'Reports of the Inspectors of the Prisons of Great Britain,' and a certain paper, purporting to be a copy of the 'reply of the Inspectors of Prisons for the Home District, with regard to the report of the Court of Aldermen, to whom it was referred to consider the first report of the Inspectors of Prisons so far as related to the jail of Newgate,' and being the publications in respect of which this action (such action having been commenced by virtue of a writ of summons, bearing date the 13th day of February last) hath been commenced and prosecuted, were and are the books of reports and papers published by the above named defendants by order and under the authority of the House of Commons.

"Given under my hand, in pursuance of the statute in such case made and provided the 20th day of April, in the year of our Lord, 1840.—Charles Shaw Lefevre, Speaker of the House of Commons."

Mr. *Platt*, who appeared on behalf of the plaintiff, insisted that the declaration in this case ought to be verified by an affidavit.

Mr. *Wightman* contended that the declaration and the action were sufficiently verified by the reference made to them in the speaker's certificate. [He afterwards produced an affidavit, verifying the declaration.] The certificate itself was verified by affidavit in the manner required by the act.

Mr. *Platt* claimed to be heard on behalf of the plaintiff for the purpose of shewing cause against the rule in the first instance.

Lord *Denman*, C. J.—I am not sure that we ought to hear counsel for the defendant in this case.

Mr. *Platt* insisted that, as the statute required twenty-four hours' notice of motion to be given to the plaintiff, it intended that he should have the opportunity of shewing cause against the rule.

Lord *Denman*, C. J.—That might be for the purpose of preventing him from uselessly incurring further costs.* But it will be better to hear you.

Mr. *Platt* then contended that the relief prayed could not be granted unless it was shewn that the declaration had been filed or delivered, and had been exhibited to the Speaker; for that otherwise he might not be able to know in respect of what complaint the action was brought. He further contended that as this was a case in which the defendants had suffered judgment by default to be signed against them, they had thereby admitted that they had been guilty of publishing a false and defamatory libel, and that the act was not intended to apply to a case of that sort.

Lord *Denman*, C. J.—There is really no doubt here. The act is imperative, and must

be complied with. The speaker has certified that this action is in respect of a publication issued by the order and under the authority of the House of Commons. Whether that declaration was or was not necessary is not now a question,—here it is, and we must suppose that the speaker was satisfied with the fact when he made the statement. We are satisfied that the provisions of the act have been complied with, and the rule must be granted.

Rule accordingly.—*Stockdale v. Hansard and others*, E. T. 1840. Q. B. F. J.

PROMISSORY NOTE.

In an action on a promissory note by an indorsee against the maker, the latter pleaded, first, that he did not make the note; and secondly, that (for certain causes stated at large in the plea) he had signed his name to a paper stamped with a 3s. 6d. stamp, and had sent the paper to A. to fill in the note with the sum of 65l., but that A. had filled it in with the sum of 100l. It was proved at the trial that such a message was sent to A., but there was no proof that it was ever delivered to him. The jury having found for the defendant, the Court, thinking that the evidence supported the plea that the defendant had not made the note, refused to disturb the verdict.

Mr. *Hoggins* applied for a rule to shew cause why the verdict which had been given in this case for the defendant, at the sittings after last Hilary Term, should not be set aside. This was an action on a promissory note for 100l., drawn by the defendant on and payable to Benjamin Jones, and indorsed by him to Valentine Lewis, and by Lewis to the plaintiff. The defendant pleaded, first, that he did not make the note, and secondly as to so much of it, except 65l. that the defendant being indebted to a certain Banking Company at Manchester in the amount of 60l., and an action having been commenced to recover the said debt, he and one D. Beavan, in order to stay proceedings thereon, agreed with the Banking Company to give their joint and several promissory note to Jones, who was the manager of the Company, for the sum of 60l. for the said debt, together with 5l. for the costs and charges; that the defendant and Beavan wrote their names on a paper stamped with a 3s. 6d. note stamp, and delivered the same to Jones for the purpose of its being filled up, and on the express instruction to the said Jones that the sum to be inserted in the said promissory note should not exceed 65l.; but that Jones without the authority and knowledge of the defendant, filled up the said paper with the sum of 100l., which was the same note mentioned in the declaration; that there never was any other consideration for the note but such as aforesaid, nor was there any consideration for the indorsement of the said note by Jones to Lewis, or by Lewis to the plaintiff. The replication was that the said note was made and indorsed for the full value of the sum of

* Or, perhaps, to enable him to shew the court such circumstances of vexation as would induce the court, while it awarded to the defendant the relief provided by the statute, to impose costs on him for a delay in making the application. See the act, p. 6, ante.

money in the said note mentioned. The cause was tried before Lord *Denman* at Guildhall; a witness was called, who proved in terms the plea which had been put on the record, except so far as related to the allegation that no consideration had been given for the note by the plaintiff. The witness stated that he was desired by the defendant when the paper was signed, to take it to Mrs. Griffiths, who was to give it to Jones, and to tell him that he was not to fill it up for more than 65*l.*, but there was no proof whatever that the message was ever delivered to Jones, nor was there any thing but the defendant's own statement to shew that he was not liable for the full amount of 100*l.* for debt and costs. Mrs. Griffiths was not called, and it was therefore submitted that there was no sufficient evidence to go to the jury on the part of the defendant. The Lord Chief Justice, however, left it to the jury to say whether the defence set up had not been proved in substance and they returned a verdict for the defendant. [Mr. Justice *Patteson*. Was not the first plea proved?] It was not. The defendant had made the note. [Mr. Justice *Patteson*. It was in blank when it was delivered; and the person who filled it up had no authority to insert a greater sum than 65*l.*: he inserted 100*l.*—Can this be called a note made by the defendant, or by his authority?] There was no proof that the message restricting Jones's authority was ever delivered to him. [Mr. Justice *Patteson*. It does not matter whether he had notice of that restriction or not; for he was in fact without authority to fill in for more than 65*l.*] But that was the failure of the defendant's own agent and servant. Suppose the bill to be in the possession of an innocent holder who had given 20*s.* in the pound for it. [Mr. Justice *Patteson*.—Still the answer recurs. If I gave a man special authority to do a certain thing, and he exceeds the authority, I am not bound by his act. There is no case to shew that a limited agent may bind his principal for more than the extent of the special power.] Lord *Denman*, C. J.—Suppose that this had stood as a bill for 20*l.*, and that the agent had put another cipher, and made it 200*l.* That would have been a fraud and forgery. There was no fraud proved here: there was no evidence that the agent ever received the message stated to have been sent to him. The stamp was a stamp for a bill for a larger amount than 65*l.*, and if such a stamped paper had been found in the street with the name of the maker signed in, and the finder had filled in any amount within that covered by the stamp, a person who afterwards became the *bona fide* holder of such a bill might recover on such an instrument.]

Per Cur.—The defence was made out, the note was made without authority.

Rule refused.—*Rowland v. Evans*, E. T. 1840. Q. B. P. J.

Queen's Bench Practice Court.

SPECIAL JURY.—LIST OF PROSECUTORS. QUIA TIMET.

Where an indictment has been preferred by a society consisting of several members, and it is suggested that the indictment will be tried by a special jury, but the defendant has not pleaded, the court will not require the prosecutors to give a list of the members of the society, to enable the defendant to strike the special jury.

Adolphus moved for a rule in this case, calling on the solicitors of the society prosecuting the defendants, to shew cause why the defendant should not be furnished with a list of the members, in order that he might know whom to strike off on the reduction of the special jury list. It was an indictment for a libel, at the instance of a society of individuals, against the defendant. This society was numerous, and in it were many influential persons. It might therefore be possible that the case might come on to be tried by a special jury, some of whom might be members of the society in question. An application of a similar nature had been made by Lord *Abinger*, when at the bar, in a case in which the Constitutional Association were the prosecutors.

Williams, J.—Has the defendant pleaded to the indictment?

Adolphus.—No.

Williams, J.—I remember very well the case quoted by Mr. *Adolphus*, in which the Master of the Crown Office was furnished with the names of the Constitutional Association; but nevertheless, as the defendant has not pleaded to the indictment, and as the case may never come before a special jury, I think the present application premature. At the same time, I am far from saying that the application may not be granted at a later period.

Rule refused.—*Reg. on the prosecution of Society v. Richardson*, E. T. 1840. Q. B. P. C.

Common Pleas.

LANDLORD AND TENANT.—CREATION OF TENANCY.—DEMISE.

A tenancy must be created by contract, but there need not be evidence of an express contract given, if from the circumstances of the case, the assent of the parties to create the relation of landlord and tenant may be implied.

In this case *Channell*, Serjt., moved for a new trial on the ground of misdirection. It was an action of trespass for breaking and entering three closes of the plaintiff, to which the defendant, pleaded first, not guilty; secondly, that the defendants were not possessed; and thirdly, that the closes were customary tenements of the manor of Bougate, and were granted by the lord according to the custom, to F. Newborn and W. Trotter, and that the defendants entered as their servants. Replication to the third plea, of a demise to the plaintiff. Rejoinder, traversing the demise. The cause was

tried at Durham, and it appeared that the three defendants were in the employ of the Bishop's Auckland Railway Company; one of them being the contractor, another the engineer, and the third the inspector. The company contracted with W. Brown for the purchase of the land in question, the amount payable being ascertained by a reference which was made, and the sum awarded being paid. It appeared further, that W. Brown was the owner in fee, subject to a mortgage, and subsequently to such mortgage, and before the contract with the railway company, had granted a lease for a term of years to the plaintiff. In July 1839, the mortgagee assigned his interest to Newborn and Trotter, the persons named in the plea. It was admitted that the title of the assignees of the mortgagee was complete, subject to the interest which the plaintiff would take under the demise stated in the replication. In order to make out this demise, the plaintiff gave in evidence a notice, dated August 1, 1839, signed by Newborn and Trotter, giving him notice of the mortgage, and of the assignment of the mortgagee's interest to them, and requiring him to pay to them all rent then due, or thereafter to become due for the premises comprised in the mortgage; and it was contended on behalf of the plaintiff, that the notice, coupled with the other facts, established a demise in point of law. On the other hand it was contended that the notice was given in ignorance of the existence of the lease from W. B., and in ignorance that the plaintiff was actually in possession under that lease for a term of years, and that no yearly tenancy was created by the notice. The Judge's opinion was, that the legal effect of the notice was to create a demise as stated in the replication; and the jury consequently found for the plaintiff.

Channell, Serjt., now submitted that the learned Judge should not have stated that a tenancy was created by the notice. The relation of landlord and tenant can only be created by contract, therefore the question should have been left to the jury to say whether the tenant agreed to become the tenant of Newborn and Trotter. In *Pope v. Biggs*,^a the tenants agreed to hold under the mortgagees, and the question was as between them and the assignees of the bankrupt mortgagee. The expressions there used by *Bayley, J.*, as to the effect of a notice by a mortgagee, are somewhat qualified by the late case of *Evans v. Elliott*.^b

Tindal, C. J.—Why might not the tenant be taken to have assented to hold under the new landlords?

Channell, Serjt.—The objection is, that the Judge did not leave it to the jury to say whether he had assented or not, but expressed his opinion on the law. When the company applied to treat for the purchase, the tenant dealt with the property as his own. There was, at all events, no evidence of a demise for a year. *Rogers v. Humphries*,^c *Waddelove v. Barnett*.^d

Tindal, C. J.—I agree that the relation of landlord and tenant can only be created by contract, to which both parties assent; but I think that in this case, both by the finding of the jury and the other facts, both parties are to be taken as having assented. Ever since the case of *Keith v. Hall*,^e the law has been clear that a tenancy cannot be created by the mortgagee subsequently to the mortgage; but the mortgagee may nevertheless adopt the act of the mortgagee, and affirm a tenancy from year to year. The precise question here is, whether Newborn and Trotter, the assignees of the mortgagee, did demise for a year. It appears that after the assignment to them, they gave a notice, and the judge left it in substance to the jury that they should imply an assent to hold at least for one year; but it is said that no question was left to the jury whether the tenant assented or not. It certainly does not appear that this precise question was left to the jury, but the judge was not at the trial requested so to leave it; but he would doubtless have been so requested if there could have been any doubt that the jury could reasonably have come to any other conclusion. It is manifest what would have been the result if the question had been so left. According to the old law, under an issue of *demise an non*, it was not necessary to prove an attornment. *Hudson v. Jones*.^f I think there should be no rule.

Bosunquet, J., and *Ersbine, J.*, concurred.

Rule refused.—*Brown v. Storey and others*, E. T. 1840. C. P.

Exchequer of Pleas.

EVIDENCE.—NOTICE TO PRODUCE.—SECONDARY EVIDENCE.

Notice to produce at the Surrey assizes, Kingston, for Friday, is too late on Wednesday, when served at Kingston, on the attorney, the client residing in Cumberland.

Theiger moved for a new trial, on the ground of misdirection by the learned judge who tried the cause. It was an action to recover a certain sum of money for coals supplied by the plaintiffs, who were coal merchants in London, against the defendant, who was alleged to be a director of the United Kingdom Beet-Root Sugar Company. The defendant, it appeared, had never taken any shares in the Company, and therefore it was sought to fix the defendant by acts on his part to shew that he was a director. One of the acts was, that he had put his name as a joint-maker of a promissory note, in liquidation of one of the debts of the Company, when attending a meeting of the directors. An action was brought against the defendant on this bill, and the defendant ultimately paid it. The attorney who defended that action was the attorney in the present. When the action was settled, the bill was given up to the defendant. The cause was tried at the Surrey assizes at Kingston, on Friday. The commission day was Monday. On Wednesday the plaintiff's

^a 9 B. & C. 246.

^b 9 Ad. & El. 352.

^c 4 Ad. & El. 299.

^d 2 N. C. 588.

^e 1 Doug. 21.

^f 3 P. Wms. 426.

attorney gave notice to the defendant's attorney to produce the bills. It appeared that the defendant was resident in Cumberland. On this proof, it was proposed to give parol evidence of the promissory note. Lord *Abinger*, C. B., who tried the cause, was of opinion that sufficient notice had not been given, to let in parol evidence of the contents of the note. The jury found a verdict for the defendant. *Theniger* now moved for a new trial, on the ground of misdirection.

Parke, B.—I think the notice in this case was not sufficient. It was but two days' notice on a party living in Cumberland, which was clearly too little. If the trial had taken place in London, and the defendant had resided there, the notice would have been sufficient.

Lord *Abinger*, C.B., *Alderson*, B., and *Rolfe*, B., concurred.

Theniger then moved on the ground that the verdict was against evidence.

Per Curiam.—There was some evidence in support of the plaintiff's case, but the jury have not thought it sufficient.

Rule refused.—*Williams v. Hillary*, E. T. 1840. Exchequer.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Copyholds Enfranchisement. *Ld. Brougham*.
[In Select Committee.]

For facilitating the Administration of Justice.
[For second reading.] Lord Chancellor.

For the commutation of Manorial Rights.
[For second reading.] Lord Redesdale.

Vagrants' Removal.
[For third reading.]

To amend the Tithes Commutation Act.
[In Committee.]

Frivolous Suits Act amendment, touching costs.
[In Committee.] Lord Denman.

Rated Inhabitants Evidence.
[For third reading.]

To augment the Maintenance of the poor
Clergy. [For second reading.]

House of Commons.

To amend the Law of Copyright.
[In Committee.] Mr. Serjt. Talfourd.

To improve the High Court of Admiralty.
[In Committee.]

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.
[In Committee.] Lord J. Russell.

To extend Freeman and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.
[In Committee.]

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

Prisons Act Amendment.
[For third reading.]

To consolidate and amend the Law of Sewers.
[In Committee.]

Small Debt Courts for
Aston, Tavistock,
Liverpool, Wakefield Manor.
Marylebone.

Summary Conviction of Juvenile Offenders.
[In Committee.] Sir E. Wilmot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage. Mr. W. Miles.

Metropolitan Police Courts.
[For second reading.]

To abolish capital punishment in all cases except Murder. Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.
Solicitor General for Ireland.

For the further amendment of the Poor Law.
[For second reading.]

For the improvement of Grammar Schools.
[In Committee.]

REMOVAL OF COURTS FROM WESTMINSTER.

Petitions for the Removal of the Courts from Westminster to a more convenient situation, have been presented from
Rugby, Reading, Worcester.

A General Meeting on the subject of the concentration of the Courts in what may be called a *Hall*, or *College of Justice*, will be held at the Law Society on the 8th instant. The meeting will no doubt be numerously attended, and we wish the promoters the fullest success. We have often advocated this measure.

THE EDITOR'S LETTER BOX.

We are requested to call attention to the Bill to improve the practice and extend the jurisdiction of the High Court of Admiralty in England, of which a summary was given the 11th April (19 L. O. 467) particularly as regards the extent to which it will increase the business of the proctors, who have the exclusive practice in the Admiralty Court, to the prejudice of attorneys.

The Analytical Digest of all reported Cases down to the 1st instant, being Part II. of the Digest for 1840, will be published next Saturday.

The Legal Observer.

SATURDAY, MAY 9, 1840.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PROGRESS OF LAW REFORM.

A BILL to improve the registration of voters has just been introduced, and there is one portion of it to which we wish to advert—the proposed alteration as to the revising barristers. We have long objected to the present mode of revising the registry by a numerous and fluctuating body. We conceive that fixed principles in every branch of the law, are of the utmost importance, and that these may be more easily obtained by a small and certain number of men, who may easily communicate with each other, than by a large and unfixed number, who do not communicate with each other. We have nothing to say against the gentlemen who have hitherto acted as revising barristers; on the contrary, we think, that as a body, they have not shewn themselves incompetent to the discharge of the duty assigned them, and have done better than could have been expected. But this cannot alter a system essentially wrong, or render a change undesirable. The proposed alteration in this respect is this: to substitute a body of fifteen barristers, to be permanently appointed, in the place of the present uncertain and fluctuating body, amounting, we believe, to 174 in number; and out of these fifteen, to appoint three as a Court of Appeal. It would be the business of the fifteen to revise the votes for the whole of England and Wales—to devote themselves to this duty; and surely they would thus be able to do their duty better than the present body, who merely take it up occasionally. This we rather think is almost universally admitted; but the practical difficulty is, in whom should the appointment be vested? It must be admitted by all, that the appointment should be deprived as much as

possible of any tinge of party. In one former bill, the Lord Chancellor was proposed, in another the Speaker; thus taking it entirely from the present holders, the Judges. In the bill just introduced, it is provided that each Judge shall appoint three barristers, thus making on the whole a body of forty-five, from whom the Speaker shall make a selection of the fifteen. We do not know that any improvement can be made as to this. The Judges will be bound to select competent persons, and it is to be supposed that the Speaker will select the best. It is proposed, we understand, to affix a salary of 1500*l.* to the office, and it is therefore obvious that the situation will now demand superior talents and standing to those now usually appointed to this office.

The bill for the appointment of the Equity Judges and the abolition of the Equity Exchequer, as far as we can learn, gains favor with the profession, and there is a great desire that it should pass in the present session, leaving to after-consideration the remodelling of the appellat jurisdiction of the House of Lords, and the reform of the Chancery Offices. In connection with this subject, a movement has been made to remove the Courts of Law and Equity to the centre of the metropolis. We have adverted to this elsewhere, and we need hardly say, that having long laboured in the cause, we hail with gratification the fair prospect of its success. It has been thought by some that the appointment of Mr. Robert Scarlett to the Mastership in the Exchequer, vacant by the death of Mr. Spranger, would seem to prove that the learned Chief of that Court is desirous of retaining the Equity Jurisdiction; but be this as it may, we feel satisfied that, even if opposed by him, the united wishes of the profession cannot be withstood.

NOTES ON EQUITY.

TRUSTEE.

THE bankruptcy of a trustee is sufficient ground for his removal, although he has obtained his certificate, and the trust property is in the hands of a receiver. *Bainbridge v. Blair*, 1 Beav. 495.

A female is generally considered as an ineligible person as a trustee. We are not aware that this has ever been decided. On an unmarried person being proposed, however, Lord Langdale, M. R., said, "It was not the usual practice, and it might lead to inconvenience in case of her marriage, when her husband would have the power of interfering with the trust. *Brook v. Brook*, 1 Beav. 531.

DISCOVERY.

Lord Redesdale, in his Treatise on Pleading, 151, says in a note, "A discovery has been compelled to aid the jurisdiction of a foreign court;" and he cites an unreported case of *Crowe v. Del Rio*, (see also *Earl of Derby v. Duke of Athol*, 1 Ves. sen. 201,) in which it was held that on a plea to the jurisdiction it must be shewn what other Court has jurisdiction. In a recent case the Vice Chancellor allowed a demurrer to a bill of discovery in aid of the defence to assist in a foreign Court [the Court of Jamaica]. We extract the following portion of his judgment:—

"It seems to me to be singular, considering the vast number of appeals that British subjects, as well as foreigners, have made to the Privy Council in respect of foreign plantations, that no instance can be produced of this jurisdiction having been exercised, except the solitary one in the note in Lord Redesdale's book; and it is equally singular if, in his opinion, the case was good law, that he should not have cited it with greater confidence than he has done. In the case of *The Earl of Derby v. Duke of Athol*, 1 Ves. 202, Lord Hardwicke seems to think it clear that this Court will not compel discovery in favour either of an inferior Court, or of a Court which has power in itself to compel a discovery. These two propositions are plainly deducible from the language which his Lordship uses towards the conclusion of his judgment; and I consider that, in the contemplation of the Court of Chancery, every foreign Court is an inferior Court. In the case of *Crowe v. Del Rio* (which is the only authority to be found on the point now before us), the defendants were compelled to answer by the overruling of the demurrer; and it seems to me that, without entering into the merits of the case, the demurrer was defective in point of mere form, and therefore it might have been overruled on that ground. In that case two grounds of demurrer were assigned;—one was the general want of equity; but, as the bill was not filed for relief, but for discovery only, that would be no objection. The other ground was that the defendants were not parties to the suit in the foreign Court. That, therefore, was a speaking demurrer, for there was no allegation on the face of the bill that they were parties

to the suit, and the Lord Chancellor may very probably have overruled the demurrer on that ground, without at all entering into the consideration of the question whether this Court will enforce discovery in aid of proceedings in a foreign Court. I also think that there is not, in the present case, a sufficient averment that the discovery cannot be obtained in the Court at Surinam. The allegation, in my opinion, does not amount to anything more than a sort of argumentative statement that Sir W. Young has been, and now is, resident in this country, and therefore the plaintiff cannot have the discovery abroad. But *non constat* that he may not change his residence, and when the suit is commenced, be in a place where the discovery may be enforced. It appears to me that the observations of Lord Hardwicke, in *The Earl of Derby v. Duke of Athol*, apply to the present case; and I should be extremely sorry to be the first Judge to decide that this Court is, in all cases, to give its aid in compelling discovery in aid of the prosecution, or the defence of an action, in a foreign Court. And my opinion is, that this demurrer must be allowed." *Bent v. Young*, 9 Sim. 130.

THE PROPERTY LAWYER.

BUILDING CHURCHES.

By stat. 9 Geo. II, c. 36, no lands or tencements, or money to be laid out thereon, shall be given on or charged with any charitable use whatever, unless by deed indented, executed in the presence of two witnesses twelve calendar months before the death of the donor, and enrolled in the Court of Chancery within six months after its execution. Where a testatrix bequeathed a sum of money to trustees in trust, in case the inhabitants of the parish of A. should, within seven years after her death, build a church within the said parish, to pay and apply the said sum as they should think fit for and towards defraying the costs and expenses of building and erecting such church, and it was held that the bequest was valid within the above statute. Mr. Baron Alderson thus laid down the law on this subject. "The only question in this case is, whether these bequests are void by reason of the statute of mortmain. It seems agreed that if a testator gives money to trustees to build a church, or school, or almshouse, the extended meaning of the word 'build' includes not merely the expending the money in making the erection itself, but the purchasing of land on which such erection is to be made, and that the doctrine of Lord Hardwicke, that, if the trustees could obtain the land by gift from a third person, the bequest might be good, cannot be supported. Lord Eldon, in the *Attorney General v. Parsons*, 8 Ves. 186, expressly so rules, and says, that if a testator directs a school to be built, and does not himself advert by words in his will to a purpose that the land is to be acquired otherwise than by purchase, the inference is, that he meant it to be acquired

by purchase, and that the bequest is void. By 'purchase,' here Lord Eldon clearly means 'purchase out of the fund bequeathed for building.' The same rule was, in substance, laid down by the Master of the Rolls, in the *Attorney General v. Davies*, 9 Ves. 535; where the bequest was to a person or body corporate, in order to induce them to give the land; that is treated as in truth a purchase of the land from them; and the bequest was held void. "But, I apprehend, where a testator gives money to be laid out on land already purchased by others for such building, or on land to be given by a third person for that purpose, and the trustees have only authority to lay out the money in building on such land so procured, and cannot employ it in procuring such land, the bequest, if such an object appear clearly from the language used in the testator's will, is good. For then the word 'build' is not to be taken in its extended sense, as including the purchase of the land, but is by the language of the testator applied specially to the mere costs of erecting, as contradistinguished from procuring the land on which such erection is to take place."

His Lordship then stated his opinion that the particular bequest was not within the statute of mortmain.

By statute 43 Geo. III, c. 108, any person may by deed enrolled, give lands, not exceeding the value of 500*l.*, towards erecting a church or chapel of the church of England; and Mr. Baron Alderson made this further remark as to the bequest. "Independently of the above considerations, however, I apprehend that the statute 43 Eliz. III, c. 108, s. 1, makes the first bequest valid. For here, the bequest is for a church amounting only to 500*l.*, and the testatrix survived the making of the will more than three months. The two bequests must be declared good, and the costs must fall on the personal estate of the testatrix. Ordered accordingly." *Dixon v. Butler*, 3 Y. & C. 677.

NOTICES OF NEW BOOKS.

The Principles of the Law of Real and Personal Property, being the Second Book of Blackstone's Commentaries, incorporating the alterations down to the present time. Second Edition, revised and greatly enlarged. By James Stewart, of Lincoln's Inn, Esq., Barrister at Law. London: 1840.

In the last ten years more has been done to alter the law of this country than in any previous century. The change has not been sudden; perhaps more was done in the year 1833 than in any other year, but every year of the *thirties* has brought its act or acts for effecting an alteration in the theory or practice of our juridical system.

Nor is this confined to any one branch of the law: it extends to all. Look to the constitution of the country, and it will be admitted that it is difficult to point to any period of its history in which more extensive changes were peaceably effected than those brought about by the Reform Act, and Municipal Corporation Act. The law of property has been entirely remodelled. Many of the old maxims as to holding, conveying, and devising it, are entirely exploded. It descends no longer according to the old rules, founded on the feudal system; it may be aliened free from the dower of the wife, and it is now made to answer the purposes of an extended system of commerce. But perhaps the parts of our system which have been most altered are the Courts of Common Law and Equity, and their practice. The Law Amendment Act (3 & 4 W. 4, c. 42) did much in this way; and the Act for abolishing Imprisonment for Debt (1 & 2 Vict. c. 110) not to mention many others, has done even more to effect an almost entire change. Then as to the criminal law, we know that both in the definition of crimes, and their punishment, and in their mode of trial, the change is very great indeed; although here it began a little earlier than the time we have mentioned.

It will be seen, therefore, that the lawyer, who has not kept pace with the statute book, must go to school again; and the old sources can no longer be resorted to for correct information as to the present law. In this state of things, the demand for a work for supplying this information could be supplied in two ways,—the one was by writing a new system of laws, the other by adapting the old works to the present state of the law. Mr. Stewart has preferred the latter mode, and the work here presented to us is one volume of a complete edition of Blackstone's Commentaries, compiled on this latter plan. We noticed the first edition of the volume some time ago, but the author has now materially enlarged his plan. He has here given us the whole of the second volume: stating the changes made in the law in the text continuously. We give our cordial approval of this mode of editing it, more especially for students. The original text of Blackstone is so accessible, that it may be easily referred to, if necessary, the page being given in the side margin; and for practical use and impressing the alterations in the mind, the plan pursued by Mr. Stewart is far better than adding the alterations in a note,

which is always a fatiguing mode of acquiring information, when the subject is new to the mind. Mr. Stewart would have done good service if he had simply gone over the surface of Blackstone's text, warning the reader what was law, and what was not; what was *dangerous*—when the reader might fall into a quagmire,—and where he might lose himself in a labyrinth. But he has done more than this; he has caught much of the spirit of the original, and may, as we think, be taken as a safe guide to a knowledge of this subject.

The present edition has grown in his hands. From a thin octavo it has now fattened into a portly volume, and we shall not be surprised if it meets at least as much favour as the first edition. It contains, in addition, the Law of Personal Property, and we certainly consider it the best *first* book for the student of the Law of Property. He will here find the principles relating to this important branch of the law, briefly, but correctly stated, and he may fill up the outlines if he will,—but this much he must know.

NEW BILLS IN PARLIAMENT.

SETTLED ESTATES DRAINAGE AND IMPROVEMENT.

THIS bill, as amended by the select committee, is intended to enable the Owners of Settled Estates to defray the Expence of draining the same. It recites that much of the land in England and Wales would be rendered permanently more productive by improved draining, and nevertheless, by reason of the great expense thereof, proprietors having a limited interest in such land are often unable to execute such draining; and that it is expedient, as well for the more abundant production of food as for the increased employment of farming labourers, and the extended investment of capital in the permanent improvement of the soil, that such proprietors should be relieved from this disability, due regard being had to the interests of those entitled in remainder. It is therefore proposed to be enacted:

1. That it shall be lawful for any tenant for life, or for a term determinable on his or her life, under any will, settlement or other like disposition, entitled in possession at law or in equity to any lands in England or Wales, (or the guardian or guardians of any infant, on the behalf of such infant so entitled as aforesaid), to apply by petition to her Majesty's court of Chancery or Exchequer in England, for leave to make any permanent improvements in the lands to which he or she shall be so entitled, or any part thereof, by draining the same with tiles, stones or other durable materials in a permanent

manner; and in every such petition shall be specified the improvements proposed to be made, and the estimated cost thereof; and every such petition shall be referred to a Master of the said Court of Chancery or Exchequer, to inquire into and ascertain the propriety of such improvements being effected, and such master shall and he is hereby required to call for such plans and estimates and specifications in relation to the said proposed improvements as he shall think fit; and the master shall make his report respecting such proposal; and the Court to which any such application shall be made shall make such order upon such petition and report as such court shall think fit.

2. That a copy of every such petition shall be served twenty-one days at the least before the hearing thereof upon the person or persons entitled to the first vested estate of freehold of inheritance in remainder after the estate of the tenant for life, but if any of such persons shall be of unsound mind, or under the age of twenty-one years, or under any other legal disability, or beyond the limits of the United Kingdom of Great Britain and Ireland, then a copy of such petition shall be served on his, her or their behalf, upon such person or persons respectively as the said Court of Chancery or Court of Exchequer to which the said petition shall be preferred shall appoint for that purpose; and every person upon whom a copy of any such petition shall be so served, shall be at liberty to attend before the master to whom such petition shall be referred, and to consent or object to the proposal contained in such petition: but all the costs attending any such application, and of the party so served, shall be paid by the party making such application as aforesaid.

3. That if it shall appear to the satisfaction of such master, on the report of one or more surveyors, to be appointed or approved of by the said master, that it will be for the benefit of such lands that they should be so drained, and such report shall be confirmed by the said Court, then it shall be lawful for the tenant for life, or such guardian or guardians as aforesaid, who shall have presented such petition, to make and execute such improvements accordingly.

4. That in every case where the said Court of Chancery or Exchequer shall have made an order sanctioning the execution of any such improvements of any lands, and such improvements shall have been made accordingly, it shall be lawful for the master, whose report shall be so confirmed by the said Court, by a certificate under his hand to be filed in the said Court, on having satisfaction that the money had been properly expended, to authorize any such person so entitled as aforesaid, or the executors or administrators of such person, or such guardian or guardians of such infant as aforesaid, by deed in writing to charge all or any part of the lands so drained as aforesaid, or any other lands subject to the like uses or trusts as the lands so drained, with the payment to any person or persons willing to advance the same, of the amount of

the money which may be so expended, and so from time to time, as the money shall be so expended, together with interest thereon after any rate not exceeding five pounds per centum per annum, from the time of making the charge; but so nevertheless, that in any such charge it shall be provided that the principal sum charged shall be paid off by equal yearly instalments of not less than twelve years from the day of the charge, nor more than eighteen years, the number of such instalments to be determined and recommended by the said Master in his report, and so as, in proportion to the amount of the improvement in the opinion of the Master, the number of the instalments shall be diminished as the master shall think fit; and for the purpose of securing such monies to be so charged, it shall be lawful for the person making such charge to demise the hereditaments to be charged for any term or number of years, by reason whereof the rents and profits of the said hereditaments shall be applicable to the payment of the said monies so to be charged as aforesaid, but so as such term be made to cease on the payment of the monies charged: Provided nevertheless, that such person making such charge, and every succeeding tenant for life, or tenant for term of years determinable on his or her life, shall be bound to keep down the interest and instalments to be charged, or any rent charge to be charged as after mentioned; and the lands charged shall not (except as against any tenant for life or other person liable to pay such instalments and interest, or keep down such rent charge) be liable to pay more than six months of any interest, and one half of any instalment, or pay more than half a year's rent charge, which is hereby directed to be kept down as aforesaid: Provided nevertheless, that if any person shall be willing to advance to any person hereby authorized to make such charge as aforesaid, the amount he or she may be so authorized to charge in consideration of a rent charge for a term of not less than twelve nor more than eighteen years, then such person so authorized to charge, instead of charging the said hereditaments with such instalments and interest as aforesaid, may charge the same with a rent charge for any such period as aforesaid, so as that the said Master shall in his said report approve of the substitution of a rent charge, and of the amount to be charged; and shall ascertain and determine the number of years for which the same shall be granted, (such number of years to be ascertained in the same manner as is before directed with respect to the ascertaining the amount of such instalments as aforesaid): Provided also, that no person shall be entitled to make any such charge as aforesaid, unless it shall be stated in the report of such Master that it hath been made to appear to him by the report of such surveyor, that the annual value of the lands so drained will be increased by such draining to an amount equal to seven pounds per centum at least on the sum to be charged.

REMOVAL OF THE COURTS FROM WESTMINSTER.

WE noticed last week the general meeting of the attorneys and solicitors regarding the removal of the Courts from Westminster to the centre of the metropolis. During the last nine years, from our first volume, we have repeatedly urged the adoption of this measure. It is demanded more for the interest of the public than the profession. The suitors and their witnesses, and all persons interested in the administration of justice, equally with the barristers and solicitors, should be united in promoting the concentration of the Courts.

It fortunately appears that all things conspire at the present moment to favour the plan. The old Courts at Westminster remain unimproved, and are as ill adapted to their purpose, and with as little accommodation as possible. Three new Courts are now required at Westminster if the Judges continue to sit there, and three more in the neighbourhood of Chancery Lane. Thus six new Courts must be built. The splendid plan for the new Houses of Parliament ought not to be broken in upon to find room for these new Courts, and the rooms connected with them. Whilst laying out a million of money in a building for making laws, the Parliament will surely not neglect some reasonable cost and care for executing what it would otherwise be vain to enact.

In point of architectural design, there can be no doubt that great advantage would result in the construction of the Houses of Parliament by the space now occupied by the old Courts, in which committee rooms and other accommodation might be afforded, rendering the site exclusively adapted for legislative or government purposes. To some of our public-spirited friends who kindly take on themselves the burthen of representing the community, the removal of the lawyers and their clients and witnesses, and congregating them in another place, will be highly acceptable. They will think it "a good riddance." The opponents of the proposal can only consist of a small, though (we admit) a very important body,—the leaders of the bar who are in Parliament,—but these gentlemen, we do not doubt, will give up their personal convenience to promote the public welfare and the purposes of justice. It cannot be their wish that the suitors' interest should be best promoted by retaining only the members of the bar who are *not* in Parliament. It is probable (though there are and have been

many exceptions) that the men who are most distinguished in Parliament, have also been the ablest advocates at the bar, and our wish, in behalf of the profession at large, is, that there should be no disunion amongst its several classes, but that the highest talent and learning should enjoy the highest professional and public rewards.

It is no fanciful notion that dictates the propriety of separating the judicial from the legislative power. Parliament may meet amidst storm and confusion, and may even require the aid of military force; the Courts of justice should assemble in quietness, and rely only on the staff of the constable. It is better that the several places of meeting of each department should be somewhat distant; and where can justice be better administered than in the very heart of the metropolis of the Empire?

It is not merely the inconvenient distance of Westminster Hall from the centre of London, but nineteen times out of twenty, the going to Westminster Hall must be "a purpose journey," or "going special:" it is not in the ordinary course of professional business. There is no killing of other birds in your way, or whilst there,—*eundo, redeundo, et morando*,—and this is a very important matter to a man of business, whose time is every moment of value. On the contrary, if the Courts were in Lincoln's Inn Fields, both lawyer and client might branch off to a short distance before his case came on, and transact some other useful business.

Amongst other direct benefits, the suitors would be sure of having their counsel and attorneys always at hand when their business was before the Court, and it in no small degree tends to the satisfactory, even if not successful, result of a case that the client has seen his counsel, and his solicitor personally in Court, and doing their best for his interest, instead of handing over the brief to another, or attending by deputy. These things are of more importance than some of our legislators imagine.

Nineteen out of every twenty members of the bar will no doubt gladly concur in the measure. They will be spared the loss of time in uselessly walking to Westminster when they have papers waiting for them at their chambers, and they will not be prevented from attending the Judges or Masters of the several courts, or arbitrations, or consultations, or various matters which are now unavoidably postponed, or altogether neglected.

With respect to the *locality*, though we

have hitherto contended for the Rolls Estate, we must admit that the centre of Lincoln's Inn Fields would afford a site for erecting a national building, suited to the great object which is contemplated. A structure might there be raised, second only in magnificence to the Houses of Parliament. We are aware of the reverence in which Westminster Hall is held, and we participate in the feeling, and we would not consent to the change unless a great practical improvement could be effected, and unless a great ornament could be added to the British capital. In order to preserve some of the associations connected with the old Courts, we would substitute for the name of Lincoln's Inn Fields, that of "Westminster Square," and the building should be called "The Hall of Justice."

We shall give a full report of the meeting at the Law Society in our next Number.

NEW RULE OF THE COURT OF QUEEN'S BENCH.

ADMISSION OF ATTORNEYS.

Easter Term, 1840.

IT IS ORDERED, that every person who shall intend to apply for admission as an attorney of this Court, and who shall not have been admitted an attorney or solicitor of any other Court, shall (instead of the notices required by rule of Trinity Term, 31st Geo. 3, s. 2, but in addition to the notices to be given to the Examiners, Masters, &c. as required by the rule of Hilary Term, 6 William 4, 1836, read in all the Courts) for the space of one full term previous to the term in which he shall apply to be admitted, enter or cause to be entered in two books kept for that purpose, one at the Chambers of the Lord Chief Justice of this Court, and the other at the Chambers of the other Judges, his name and place or places of abode, and also the name or names, and place or places of abode of the attorney or attorneys to whom he shall have been articulated. And it is further ordered that a printed copy of the list of admissions be stuck up in the Queen's Bench Office, and at the Judge's Hall or Chambers in Rolls Garden.

And it is further ordered, that every person applying to be re-admitted an attorney of this Court, shall, instead of the notices now required, three days at the least previous to the first day of the term, and the last day of which he intends to apply to be re-admitted, leave at the office of the Masters of this Court a notice in writing, con-

taining his name and place or places of abode for the last preceding twelve months. And that before the said first day of term, he shall enter or cause to be entered in the two before mentioned books, a like notice, and shall at the same time cause to be filed the affidavit upon which he seeks to be re-admitted, at the office of the Masters aforesaid, and a copy thereof, left at the Chambers of the Lord Chief Justice of the Court of Queen's Bench. And it is further ordered, that the Masters reduce such notices of re-admission into alphabetical order, and add the same to the list of admissions.

(Signed)

DENMAN.
J. LITTLEDALE.
J. PATTESON.
J. WILLIAMS.
J. T. COLERIDGE.

QUESTIONS AT THE EXAMINATION. *Easter Term, 1840.*

I. PRELIMINARY.

Where did you serve your clerkship?
State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
Mention some of the principal law books you have read and studied.

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Name some (seven at least) of the most ordinary kinds of action at common law.
When there are several defendants to an action, ought you to insert all their names in one writ, or is there any limitation as to the number?
What are the names of the different pleadings in an action of assumpsit?
When personal service of a writ of summons cannot be effected, how is the plaintiff to proceed?
Can an action be brought by an infant, and how is it to be prosecuted? Can an action be brought against an infant, and if so, how must he defend it?
Within what period can an action of ejectment be brought?
What is the first proceeding in an action of ejectment, and how, and on whom, and where is the process to be served?
If a plaintiff delay his proceedings in an action for a considerable, and what space of time, is any, and what notice necessary before taking proceedings?
What are the different writs of execution for enforcing a judgment in an action of debt? and in an action of ejectment?

When is a defendant entitled to call on a plaintiff to give security for costs? and at what time should the application be made?

What is the meaning of suing *in forma pauperis*? and what is requisite to be allowed to do so?

What is the advantage of filing a cognovit "under the statute," and within what time must it be so filed?

In what cases must an attorney deliver his bill of costs signed, before he can bring an action? and how soon after delivery can he bring an action?

Is it necessary for an executor or administrator of an attorney to deliver a bill of costs signed, before bringing an action?

Within what time must application be made for a new trial? or to set aside an award?

III. CONVEYANCING.

Are there any cases in which the interest of a devisee or legatee does not lapse by their death in the lifetime of the testator? and state instances?

What is the order in which next of kin are entitled to letters of administration?

In what case is a purchaser bound to see to the application of the purchase money? and in such case, who are necessary parties to the conveyance?

Is a mortgagor barred of his equity of redemption by any and what length of time, and how may this right be preserved?

What are terms attendant, and what in gross?

In what cases will a term protect a purchaser from incumbrances?

What are the requisites necessary to be observed to bar dower to the wife before marriage?

Can a valid conveyance be made of real property to charitable uses, and how?

What are voluntary settlements, and in what cases are they deemed fraudulent?

What is the difference between an executory devise and a shifting use?

What is a power of attorney, and how is it put an end to?

What is meant by tacking a mortgage?

Can a right of way be conveyed, and in what manner?

Would the direction to sell an estate be discretionary or absolute, in order to constitute an equitable conversion of the freehold into personality?

Is a freehold estate liable to the payment of simple contract debts in any and what cases, and in what order of distribution?

IV. EQUITY AND PRACTICE OF THE COURTS.

What is the nature and effect of a writ of *Ne exeat Regno*, and from what Court, under what circumstances, and in what manner is it obtained?

What is the nature and object of a bill of discovery?

When a bill of discovery has been filed, praying discovery only and no relief, can any, and if any, what further step be taken by the plaintiff or defendant in the suit after the answer has been filed, and the time for excepting to it has expired?

If a trustee having stock or other property vested in him become a lunatic, and a new trustee be appointed, how is a transfer of the stock, or a conveyance or assignment of other trust property from the lunatic to the new trustee to be made?

What is the distinction between a legal and an equitable debt?

To what courts or tribunals do appeals lie against the decrees of the Master of the Rolls, the Vice Chancellor, and the Lord Chancellor respectively?

Does or not an appeal to a superior court necessarily stay the proceedings under the decree or order appealed from?

Explain the nature and effect of a demurrer to a bill in equity.

Explain the nature and effect of a plea to a bill.

What is an equitable mortgage, and how is it made available by the mortgagee?

When a second mortgagee files a bill of foreclosure, how is the first mortgagee to be dealt with?

State a few of the ordinary cases in which courts of equity grant injunctions.

If a party to a suit who is ordered by the Court to execute a deed obstinately refuse to do so, is there any, and if any, what mode of giving effect to the order without obtaining the signature of the party?

What is the nature and effect of a bill of interpleader?

What is the meaning of an examination of witnesses *de bene esse*?

V. BANKRUPTCY AND PRACTICE OF THE COURTS.

What persons, whose trades are not named in the statute, have been deemed by the Courts liable to the bankrupt laws?

Are temporary or occasional dealings, and of what kind, deemed sufficient to constitute a trading?

State what acts of a trader are deemed acts of bankruptcy, and with what intention such acts must be done?

How can a debtor be compelled to commit an act of bankruptcy, since the abolition of arrest on mesne process?

State generally the proceedings necessary to be taken, and by whom, in order to obtain a fiat?

Is there any, and what, alteration recently made regarding the validity of transactions before the fiat, though after an act of bankruptcy?

If the assignees of a bankrupt do not elect to take a lease, to which the bankrupt is entitled, what proceeding can the lessor adopt?

Are there any, and what, provisions relating to ships transferred by a bankrupt, by way of security, before his bankruptcy?

Must any, and what notice, and when, be given of disputing the validity of the fiat, in an action or suit brought by the assignees?

What evidence must be adduced of the petitioning creditor's debt, trading, and act of bankruptcy, on the trial of an action by the assignees?

Will property held by the bankrupt in trust pass to the assignees?

In case a bankrupt should refuse to execute a conveyance, what is the remedy?

What effect will the proof by a creditor have with respect to a bankrupt who is in prison at the suit of such creditor?

If the fiat be superseded, can any and what proceedings be taken in an action commenced against a bankrupt before the fiat?

What debts of the bankrupt are discharged on his obtaining his certificate?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Can a person be apprehended for felony without a magistrate's warrant, and if so, under what circumstances, and by whom?

For what, if any, felonies can an accused person be admitted to bail, and by whom?

Is there any and what act for the apprehension of persons trespassing, and under what circumstances?

Under what circumstances may a constable break open an outer door in execution of a warrant?

What is essential to be proved to constitute the offence of burglary?

Can a person who has sworn to his belief of a fact, be under any and what circumstances indicted for perjury?

Where stolen property belonged to a company of many persons, is it necessary to name them all in the indictment, or what other mode, if any, may be adopted?

What acts constitute the offence of larceny?
 What are the offences still punishable with death?
 When and how do you proceed to obtain security for the good behaviour of a person?
 In what manner is the real estate of a person affected who is convicted of felony?
 Are accessories before and accessories after the fact punished differently, and if so, in what respects?

Are there any and what instances of compulsion or necessity which afford an excuse for committing an offence?
 What is the jurisdiction of the Central Criminal Court, both as to the nature of the offences, and the counties to which it extends?
 Is there any and what appeal in criminal cases?

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1840.

[Concluded from p. 11.]

Clerks' Name and Residence.

Shipman, Robert Milligan, 104, Great Russell Street, Bloomsbury; and Tenterden, Kent.
 Simcox, Alexander, 2, Upper Baker Street, Pentonville; Dublin; and Harborne, Staffordshire.
 Stamp, George, Caister, Lincolnshire.
 Sloper, John William, St. Ann's Hill, Wandsworth Common.
 Sykes, William, Millbridge, Birstall, Yorkshire.
 Shelton, George Lane, 14, Ampton Street, Gray's Inn Road; Bromyard; and Huntley Street, Bedford Street.
 Snaith, George, 19, Charles Street, Euston Sq.; and Boston.
 Smith, Thomas, 10, Seymour Place, New Rd.
 Stanbridge, Thomas, Edgbaston, Warwickshire.
 Sweet, Henry, 53, Lamb's Conduit Street; Launceston; and 40, Ely Place.
 Simpson, George Septimus, 12 and 39, Wakefield Street, Regent Square.
 Smear, Christopher, Oundle.
 Shepherd, Mark, 15, Cumming Street, Pentonville; and Stratton, Cornwall.
 Scobell, Edward Henry, 9, Chadwell Street, Myddleton Square; Bideford, Devon; and 15, Jewin Crescent.
 Shephard, William Luke, 15, Compton Street, East; Brunswick Square; and Scarborough.
 Symonds, William, 11, Southampton Buildings; Liskeard, Cornwall; and 43, Gower Place, Euston Square.
 Staley, Alfred, Stroud, Gloucestershire.
 Smith, Arthur, 39, Judd Street; and New Millman Street.
 Smith, Joseph Crowther, 15, Ely Place; and Walsall, Staffordshire.
 Scalf, John the younger, Newcastle-upon-Tyne.
 Steavenson, John, 5, Judd Place East, New Road; and Newcastle-upon-Tyne.
 Thompson, William, 18, Gloucester Street, Queen Square; Wigan; and Workington, Cumberland.

To whom articulated and assigned.

Joseph Munn, Tenterden, Kent.
 Clement Ingleby, Birmingham.
 George Marris, Caistor, Lincolnshire.
 Joseph Maynard, 3, Mansion House Place.
 James Wadsworth, late of Millbridge, but now of Eddercliffe, Yorkshire.
 William Deveroux, Bromyard, Herefordshire.
 Peter Tuxford, Boston; assigned to B. Kenrick, and Henry Harwood, Boston.
 Richard Edgar Smith, New Bowell Court.
 John Richards, Birmingham; assigned to James Motteram, Birmingham.
 Northmore Herle P. Laurence, Launceston.
 Thomas Atkinson, Peterborough; assigned to Evan Morris, Temple.
 George Croxton, Oundle.
 Edward Shearn, Stratton.
 Henry Arthur Harvie, Bideford.
 John Uppley, Scarborough.
 Edward Hoblyn Pedler, Liskeard.
 William Aldrige, Stroud.
 John Smith, Crediton; assigned to John Cleave, Hereford.
 Samuel Smith, Walsall.
 George Tallentire Gibson, Newcastle-upon-Tyne.
 George Waugh Stable, Newcastle-upon-Tyne.
 Joseph Thompson, Workington, Cumberland; assigned to Edward Scott, Wigan, Lancashire.

Clerks' Name and Residence.

Torre, John Alexander, 9, St. James's Street, Westminster.
 Traviss, John, 7, Wardrobe Terrace, Doctors' Commons; 8, Wardrobe Terrace, and 7; Harpur Street, Red Lion Square.
 Thorne, John Charley, 5, Derby Street, King's Cross; and Ilfracombe.
 Torr, John Smale, 111, Upper Seymour Street; Exeter; Hyde Street, Bloomsbury; and Compton Street, East.
 Tryon, Henry Curling, 13, New North Street, Red Lion Square; Ramsgate; and Wells Street, Gray's Inn Road.
 Tepper, Jabez, 3, Bedford Row.
 Thorp, Frederick William, Needingworth, Hauts; 39, Wakefield Street, Regent Square; and St. Ives, Huntingdonshire.
 Taylor, Horatio Trafalgar, Middleton, Lancashire.
 Verrall, Henry, 4, New Millman Street; Guildford Street; and Brighton.
 Veysey, Arthur, Brighton, Sussex.
 Veal, Charles Marleett Barron, 24, Myddleton Square; and Great Grimsby, Lincolnshire.
 Wace, George, 6, Southampton Buildings; Shewsbury; and 28, Winchester Row, Edgeware Road.
 Watts, John King, St. Ives, Huntingdonshire.
 Webb, Edward John, 26, Alfred Street, Bedford Square; and Ledbury, Herefordshire.
 Whittenbury, John Llewellyn, 11, Grafton Street, Fitzroy Square; Shrewsbury; and Liverpool.
 Weyman, Thomas, 34, Holmes Street, Commercial Road; and Ludlow, Shropshire.
 Wittey, Samuel, the younger, Chippenham, Wiltshire.
 Wilby, John, Wakefield, Yorkshire.
 Wasbrough, Henry Sidney, 3, Garden Place, Lincoln's Inn Fields; and Bilton, Gloucestershire.
 Wintle, James, 3, Garden Place, Lincoln's Inn Fields; and Saintbridge, Gloucestershire.
 Wilson, John, Nottingham.
 Wormald, William, Leeds.
 Wright, Newenham Charles, 11, Queen Square, Bloomsbury.
 Wright, Charles, Swaffham.
 Wright, Robert, Shelton Staffordshire.
 Watson, Jacob, Fakenham.
 Walker, Willoughby Newton, 28, Great Ormond Street, Queen Square; and 14, Bedford Square.
 Welsh, William Lister, Manchester.
 Wheelwright, Charles, 13, Warwick Court; Lower Charles Street, Northampton Square; Erdington Hall, near Birmingham; and Northumberland Court, Strand.
 Wiggins, James Mann, York.

To whom articulated and assigned.

Edward Knocker, Dover; assigned to George W. Abbot, 9, Saint James's Street.
 William Shepherd, Barnsley, Yorkshire.
 John Michell the younger, late of Ilfracombe, Devon, but now of Redruth, Cornwall.
 John Smale, Exeter
 John Mercer, the younger, Ramsgate.
 Josiah Iles Wathen, Bedford Row.
 George Game Day, Saint Ives.
 Richard Halsall, Middleton.
 John Tribe, Steyning, Sussex; assigned to Robert Upperton, Brighton, Sussex.
 Robert Upperton, Brighton, Sussex.
 Questor Veal, Great Grimsby.
 Richard Wace, Shrewsbury.
 Thomas Escolme Fisher, Saint Ives, Huntingdonshire.
 Joseph Allen Higgins, Ledbury, Herefordshire.
 Sir John B. Williams, Knight, Shrewsbury.
 William Downes, Ludlow, Salop; assigned to James Cross, Staple Inn.
 Samuel Wittey, Colchester, Essex; assigned to Grantham R. Dodd, New Broad Street; assigned to Joseph Phillips, Chippenham.
 George Robinson, Wakefield; assigned to Thomas Taylor, Wakefield.
 John Bligh Stanley, Bristol; assigned to John Aubrey Whitcomb, Gloucester; re-assigned to John Bligh Stanley, Bristol.
 Richard Helps, Gloucester; assigned to Chas. Meredith, Lincoln's Inn.
 Charles Harrison Clarke, Nottingham.
 Henry Wells, Nottingham.
 Timothy Beavor, Wakefield.
 Alexander Milburn, Lincoln's Inn Fields; assigned to James Boxer, Moorgate Street.
 Edward Sewell, Swaffham, and Robert Sewell, Swaffham.
 Robert Fenton, Newcastle-under-Lyme, and Robert Fenton, junr. Newcastle-under-Lyme.
 Edmund Kent, the younger, Fakenham.
 Edward Harrison, Southampton Buildings,
 Richard Claye, Manchester.
 Arthur Ryland, Birmingham.
 William Napier Dibb, York.

Clerks' Name and Residence.

Yates, William, Liverpool.

Yarrington, William Samuel, Swaffham.

To whom articulated and assigned.

John Atkinson, Liverpool, assigned to Richard Finlow, Liverpool; assigned to John Johnson Brown, Liverpool.

Samuel Sadler, North Walsham; assigned to William Yarrington, Swaffham.

Added to the List pursuant to Judges' Order.

Etches, William Macconnell, 6, White Conduit Terrace, Islington; and Machon Bank, near Sheffield.

Grigson, Edward Robert, Walton, Norfolk.

Griffiths, Griffith, 269, Strand; and Carmarthen.

Hawkyard George, Ashton-under-Lyne, Lancashire.

Rendall, Alfred, 8, Clarence Terrace, Islington; Kingston.

Stone, George, Liverpool.

Attwood, Richard Henry, Swansea.

Michell, Charles Clement, 16, Warwick Court, Holborn; and Shepton Mallett, Somersetshire.

Henning, Thomas Parr, 19, Holland Street, Kensington; and Sherborne.

Serjeant, Robert, Spencer Street, Goswell Rd.; Wadebridge; Callington; and King's Square.

William Pashley Milner, Sheffield; assigned to Thomas James Parker, Sheffield.

Edward Harvey Grigson, Walton; assigned to Charles Goodwin, King's Lynn.

David Griffiths, Carmarthen.

James Mellor, Ashton.

Benjamin Bodenham, Kingston, Herefordshire.

William Bartley, Liverpool; assigned to John Haukinson Kenyon, Liverpool.

Charles Collins, Swansea.

Edward Michell, Shepton Mallett.

Wm. Price Pinchard, Tauntan.

Rd. Symons, and Edw. Luxmore, Wadebridge.

Added by Rule of Court, made 23rd April.

Drew, Henry Richard, March, Cambridge-shire. Richard Matthews, March.

COMMON PLEAS.

Clarke, Edward Salmon, 6, Durham Place, Hackney Road.

Stokes, Charles, Upper Framnere, Cheshire; 5, Field Street, Everton, Liverpool.

Wade, Charles Joseph, 3, Clement's Inn.

Arthur Clarke, Bishopgate Church Yard; assigned to Thomas B. Tanqueray, same place.

Thomas Andrews, Gt. Coggeshall; assigned to Samuel Waylen, same place.

Thomas Wood, Wolverhampton, now of London; assigned to Thomas H. Bower, 46, Chancery Lane.

QUEEN'S BENCH.

Easter Term, 1840.

3rd Victoria, 1st May, 1840.

THIS Court will, on the 14th instant, hold sittings, and will proceed in disposing of the business in the Special Paper on that day. A list of the cases to be heard will be immediately exhibited on the outside of the Court of Queen's Bench, and of the Chief Justice's Chambers.

BY THE COURT.

Queen's Bench.

The Sittings after Easter Term, 1840.

MIDDLESEX.

LONDON.

Thursday, May 14th
Causes with judgment
of the Term only.

Friday, May 15th
Saturday .. 16th

Monday, May 18th
(Adjournment day.)

Tuesday May 19th
Wednesday .. 20th

SUPERIOR COURTS.

Vice Chancellor's Court.

WILL.—DECREE.—IMPUTED FRAUD.

Upon a bill seeking to set aside a decree in a former suit, establishing a will, on the ground that the will was invalid, and that the decree was obtained by fraud: Held, under the circumstances stated, that the will was duly executed, and the decree establishing it properly made.

This case was argued at great length by Mr. Knight Bruce, Mr. Wakefield, and Mr. Norton, on one side; and by Mr. Jacob, and several other counsel, on the other. Their course of argument, and the facts of the case and pleadings, are fully stated in the following judgment, which was pronounced after full consideration of the case.

The Vice Chancellor.—The bill in this case

was filed as an original bill, for the purpose of removing out of the plaintiff's way, a decree made in the cause of *Dickins v. Surridge*, which decree is alleged to have been obtained by fraud; and, as I understand the case, unless that decree can be removed, the plaintiff cannot have such relief as he seeks by his bill. The question, therefore, which I have to consider is whether it does sufficiently appear in this cause that there has been that fraud which is alleged by the plaintiff's bill, and it becomes necessary for that purpose to see what it is the plaintiff has alleged as constituting the matter of fraud. The summary of this story is, that Thomas Wakefield, who is represented to have been seised in fee of some freehold and copyhold estates, by his will devised the same to Mary Wakefield for her life, and after her death to his daughter Joannah; that after his death Mary entered into possession, and Joannah died intestate, leaving as her heir and customary heir, Anne Wakefield, whose will is in question in this cause. If that Anne Wakefield died intestate, the reversion in fee of both the freehold and copyhold would have descended first, on one John Archer, next on Thomas Archer, and so ultimately would have come to the present plaintiff. It appears that in the year 1798, Ann Wakefield, on whom the reversion descended by the death of Joannah intestate, took upon herself to make a will, and, by that will—supposing it a good will—she devised all the estates in question to John Archer (called the Wheelwright, to distinguish him from the other John Archer before mentioned,) and Thomas Surridge, who were also named executors; and the trusts expressed in the will were that they should sell the estates, and out of the proceeds, which were to be invested, pay an annuity of 15*l*. to one Elizabeth Dickens for her life, and then the residue of the interest was given to John Archer (the wheelwright) for his life, who on the death of Elizabeth Dickens was to take one half of the fund absolutely, and the other half was to go in equal shares to Anne South, and to Mary Bowyer, or, in case of her (M. B.) being dead, to her children. To the other trustee and executor, (Surridge) a legacy of ten guineas was given by the will. Anne Wakefield died in 1798, and her will was proved by both the executors in the same year. Mary Wakefield, the tenant for life under the will of Thomas Wakefield, died in 1820, and then the reversion came into possession. It appears that there was a sale of the copyhold estates, and of a small piece of the freehold, in February 1821. William Archer, the present plaintiff, was then a minor and in great poverty, and he did not attain his age of twenty-one until September 1826. Some sort of notice was given to the trustees that he would dispute the sale. He states in this bill that he has lately discovered that the alleged will of Anne Wakefield was not, and could not have been duly executed, and that the decree of court purporting to establish that will, had been fraudulently obtained, and therefore was not binding on him; “for he has discovered and charges the fact to

be that the said Anne Wakefield was an idiot, and incapable of making any legal disposition of her property, and that she was made to execute a certain paper writing as her last will at the instance and through the contrivance of the said John Archer, (the wheelwright,) and Thomas Surridge.” The bill sets forth the said will of Anne Wakefield to the effect before mentioned, and alleges that before her death the said J. Archer, and T. Surridge proved the will, and on the death of Mary Wakefield, Surridge, having survived Archer, entered into possession and receipt of the rents and profits of the devised estates, and in order to establish his right thereto as the surviving devisee in trust, he by advice of Mr. Windus his attorney, instituted a suit in this Court for the purpose of establishing the said will. The present bill after stating the proceedings and decree in that suit, and what the evidence was, charges that no other evidence was entered into on the part of the plaintiff in that suit, and that the witnesses were not cross-examined, and that before the decree made therein was pronounced, a treaty was entered into for sale of the copyhold estate to Gabriel Slater, who had been well acquainted with Anne Wakefield, and at the time of such treaty, had full knowledge of the several matters in this bill mentioned, and of circumstances under which the said suit was commenced and prosecuted. The bill then states the conveyance to G. Slater, and that, since the plaintiff has become acquainted with his right and with the fraud so practised, he has frequently applied to Slater, and to the other defendants to give up possession &c. Then follows a charge of the incapacity of Anne Wakefield, and that if she did subscribe her mark to the will, she was made to do so by the fraudulent influence of John Archer, (the wheelwright) and in pursuance of a design formed by him, to defraud John Archer, the plaintiff's uncle; and the bill charges, that Anne Wakefield's incapacity to make a will was well known to Slater, and that the suit to establish that will was instituted by the fraudulent concert and contrivance of the several parties thereto, all of whom were fully aware of her incapacity. And the bill further charges that the said will was not produced in Court, and that if it had, the decree establishing it would not have been suffered to pass; and it charges that under said circumstances (and others not necessary to advert to) the decree so obtained ought to be set aside as having been fraudulently obtained. The question therefore for me is whether there is evidence that that decree was fraudulently obtained; and in order to decide that question it is necessary to inquire respecting the anterior fact upon which the decree is alleged to have been founded, namely, whether there was a fraudulent contrivance in procuring the will; because it is plain on the face of these pleadings that the two facts are inseparably connected. Before I consider what is the general result of the evidence about the will, I shall consider the circumstances of fraud in obtaining the decree in the case of *Dickins v. Surridge*. It is plain on the face of the pleadings

in that case, as well as on the evidence of Mr. Windus, that that suit was brought forward for the purpose of having the will established, in consequence of the threats which had been held out on the part of Wm. Archer that the sale would be disputed. The bill was filed by Elizabeth Dickens, the annuitant, by John South, administrator of his deceased wife, and by John Bowyer, the only child of Mary Bowyer, (who represented the proceeds of the estates devised to be sold) against T. Surridge and also against Benjamin Doubleday and William Patman, Surridge being a defendant in his capacity of legatee, (if he were not paid) and surviving executor and trustee, and also being, together with Doubleday and Patman, executors of John Archer, the other executor and trustee, who died in 1813. That bill was in the common form; stating the will and devolution of the property in the manner which I have mentioned, shewing the right of the plaintiffs to institute the suit against Surridge and Doubleday and Patman; and having made William Archer a defendant, it stated that applications had been made to Surridge and the other defendants to carry into execution the trusts of the will, and it prayed that the will might be established and the trusts thereof performed and all proper accounts taken &c. An answer was put in by Surridge and Doubleday and Patman, quite in common form, admitting the facts stated by the bill in a general way, and admitting that the plaintiffs made such applications and requests to them as in the bill mentioned, and that these defendants refused to comply with such requests, because the said William Archer had given notice to the defendant Surridge of his intention to dispute the will. The present plaintiff put in the common infant's answer. A decree was made in 1823, which embodied the statement in the answer that the other defendants had refused to comply with the requests &c., because William Archer had given such notice, whereupon &c. and on hearing the several exhibits and the proofs, &c. read, the Court declared that the will of Anne Wakefield was well proved, and that the same ought to be established, and the trusts thereof performed. It appears that witnesses were examined in the cause; that the will was executed by Anne Wakefield as a markswoman in the presence of three witnesses, who being all dead, witnesses were examined for the purpose of proving their deaths and hand writing. The exhibits mentioned in the decree comprised the proof of surrenders that had been made out of court by Anne Wakefield to the use of her will. But the will does not appear on the face of the decree to have been produced to the court, and it is said in the first place, that the decree carries on the face of it evidence of fraud because the will does not appear to have been produced, and then it is said that a day ought to have been given to the infant to shew cause. Now if the customary heir had given notice of his intention to dispute the will, there could *prima facie* be nothing fraudulent in filing a bill and causing the pleadings to be put in such a state as to shew on the face of them that the suit was

made necessary in consequence of such notice. It struck me as singular that such a fraud should be concocted by Surridge, when, as the utmost he could get as the result, would have been the payment of his trifling legacy if not then already paid, and if it had been paid before, then he would get nothing at all; and I am asked, without any cogent proof of fraud, to take it as a fact that there was a fraudulent contrivance by Surridge to impose on the court and cheat the heir at law. It is charged in the bill that the testatrix was made to execute the will by the contrivance of Archer and Surridge. There is not a particle of evidence to show that the will was made by the contrivance of Archer and Surridge. There is some evidence showing that Surridge knew that the testatrix was going to make her will, but that is not evidence of fraudulent contrivance on his part, and certainly not on the part of Surridge and Archer. It also seems singular that parties contriving fraud should not have contrived it for their own benefit; whereas we find in the division of the testatrix's property, ten guineas only given to Surridge for his trouble, and Archer only takes one moiety of the proceeds of the property burdened with payment of 15% during the life of Elizabeth Dickens. The mere aspect of the will in its dispositions furnishes no ground for supposing there could have been that fraudulent contrivance which is charged, and of which fraudulent contrivance there is no proof. Then it is said the suit was fraudulently managed; first, because the witnesses were not cross-examined. I should like to know, generally speaking, what advantage is felt by gentlemen who practise in this court by cross-examination of witnesses in Chancery, and of what possible use it would have been to cross-examine when the bill was filed for establishing the will, and the heir at law might have had an issue merely by asking for it. The circumstance that those witnesses were examined only to the point of proving the deaths of the attesting witnesses and their hand-writing, appears to my mind no ground for suspicion of fraud. With respect to the conspiracy to obtain the decree,—decrees cannot be obtained in this court without the assistance of counsel. If the council lent themselves to the conspiracy charged in this case, the conspirators must have been Mr. Lovat, who drew the bill; Mr. Daniel, who drew the answer of the heir at law; the present Lord Chancellor, who drew the answer for Surridge, Doubleday and Patman, and Mr. Wingfield, one of the Masters, who was the leading counsel for the heir at law. I cannot but suppose, there being nothing to the contrary, that all those skilful persons did what it was their duty to do. I have no doubt that Master Wingfield was perfectly satisfied of what was the effect of the evidence, and quite content to act upon those observations found at the end of his brief which I now hold in my hand. The brief, after setting forth in the usual manner the bill and answer, and the depositions, has these amongst other observations by Mr. Maberly, the solicitor.—“There does not appear any ground for disputing the

validity of the will, though at the same time it may be as well to take the chance of the court not considering it fully established. You are requested to take care that the costs of the defendant William Archer will be directed to be paid to him as between solicitor and client." So there was no disposition on the part of Maberly to get all he could out of the suit. The will might have been easily produced in Court, because it was proved in the Perogative Court, and evidence is given that in a certain book which is kept in that court, containing the notices to the officers for the production of wills, there was an entry for the production of this will "at the Rolls, at eleven o'clock on the 3rd of December." It appears that the cause was heard on the 8th of December, and it strikes me that this is evidence of the intention to have the will in court, and that it might easily happen that in the hearing of many causes, when the cause is called on the will itself is not there. Sometimes the will is previously produced, sometimes not till after the hearing. It might have happened in this case that the officer attended on the third December, when, in consequence of the cause not being called on, the will might not have been called to the attention of the Registrar, or it might have happened that the will was called to his attention and no note of it was taken. But considering that the suit was instituted for establishing the will, and that the present *Lord Chancellor*, the counsel for those defendants, whose suit it in effect was, would have taken care that the suit should be made effective, I must say that the presumption is that the will was *de facto* produced, although it does not judicially appear on the face of the decree that it was produced, and therefore I am willing to admit that the decree as it stands has a fatal defect, but that defect is such that if it were worth while to appeal from the decree, and have a re-hearing, there would be no difficulty in producing the will. But I think the fair inference from all the circumstances is, that there was not fraud in procuring that decree. It appears that Mr. Maberly was employed by the parish to conduct the case for the heir at law, the present plaintiff; and Mr. Maberly states in his evidence that "he had no ground whatever for supposing that the will was invalid." It also appears in evidence that the mother of Wm. Archer went three times to Mr. Maberly's office; at the two first she did not see him, at the third she did. She did not state in her evidence in this cause that she mentioned one word about the invalidity of the will. Mr. Maberly expressly swears that he never heard there was any objection to the validity of the will. The testimony stands thus: Mr. Maberly is not contradicted, and in the mother's evidence, who must be supposed to have the interest of her child at heart, and to have known everything that was afloat with respect to the matter, she does not state she made any representation of the kind; it would therefore be too much for me to say that there was any thing fraudulent in giving the brief with these observations to counsel, or to presume that the

counsel did not fairly exercise his discretion on the case as it was presented to him: and I must say it does appear to me on the whole that there is no ground for saying that the decree was obtained by fraud. But the institution of this suit is bottomed on that which is put forward, first, as the fact that the will was unduly obtained. I have read over the whole of the evidence, and the general result of it seems to be this, that amongst the lower part of the people who inhabited the parish in which Ann Wakefield lived, and who had little opportunity of personal acquaintance with her, but seeing her casually, and having their eyes attracted by the defects in her form and by appearances of neglect of her person, might let what they saw operate on their imagination so as in their own minds to convert her into a person without common intellect. There is scarcely any one fact sworn to, showing such incapacity. Then on the part of the defendants there is evidence by persons intimately connected and acquainted with her for years; conversations are stated, for instance, that she used to take care of the child, make the toast, attend to the household work, and do things, which generally speaking, persons in her station would have to do. Besides that evidence, which all goes to shew her general capacity, there is evidence which arises from the facts that are stated in respect of the character of the witnesses to the will. It is distinctly proved that all these were persons of character and integrity—one of them a surgeon, who used to attend the testatrix in that capacity; another an ironmonger and a quaker; and it is distinctly proved as to him, that he was a man of considerable character; and it is proved by Mr. Windus that Evans, the third witness, was his own clerk; and such were the characters of these three persons who witnessed the will, that none of the witnesses in the cause believed they would be guilty of such a transaction as is imputed to them, that is, of procuring a will to be executed by a person of unsound mind; and I must say that for the purpose of deciding the question that is before me, I have not the slightest doubt that the testatrix was of sound mind and that the will was duly executed; and therefore, although I cannot pronounce any judgment on the will, I shall assume that it was duly executed by a person of sound mind. And then it further appears to me, that taking it the other way, and that there might be a doubt only on the will, there is no evidence that there was any fraud exercised in procuring the decree; and although I do admit that the decree is erroneous, yet, I do not apprehend that I am to consider error as proof of fraud. If there had been that fraudulent intention which is imputed, probably there would have been more caution to take care that what they did should be right in point of form; and I cannot but think that the very error which is now apparent, is of itself evidence of the fairness of the transaction in procuring the decree. Then there is another objection made to the decree, in respect of its not giving a day to the infant to shew cause, which is merely a collateral

matter; but I have been supplied with a case in print, which came before the present Lord Chancellor in 1835. There was a decree by which this Court declared the will well proved, with the usual directions to the Master to see what individual it was that answered a given description of a devise in trust in the will. The report was made, by which that individual was ascertained, and the final decree upon the hearing on further directions was, that the Court declared that person was the person meant in the will by such a description. Then it was referred to the Master to tax the costs, and no day was given to the infant to shew cause. Although I am not bound to pronounce any opinion on the form of the decree here, it being made at the Rolls, yet I cannot but say that it appears to me, that in this respect there was no error in that decree; but supposing there had been this or any other error, as this suit is framed I have no power to correct the error.—My opinion is, on the whole that there is no foundation for this case; that it has improperly imputed fraud, because it has not proved it; and that therefore in this case as well as in other cases of a similar kind, where fraud is imputed by the bill and is not proved, the bill must be dismissed,—simply, if the plaintiff sues in *forma pauperis*; if he does not so sue, then dismissed with costs.

Archer v. Slater and others, at Westminster, April 16th, 1840.

Queen's Bench.

[Before the Four Judges.]

PREScription.—RIGHT OF WAY.

To an action of trespass the defendant pleaded under the 2 & 3 W. 4, c. 71, s. 2, a right of way for forty and for twenty years. At the trial evidence was given to shew a right of way as far back as forty years; but no user of the right was proved within five years of action brought: Held, that this evidence did not support the plea; and that in order to support it, evidence of user from the beginning of the forty or of the twenty years, and up to a reasonable time before action brought, must be given.

This was an action of trespass for passing through several fields of the plaintiff. There were several pleas of justification, two of which were framed on the 2 & 3 W. 4, c. 71, s. 2, setting up a user for twenty and for forty years respectively. Issue was taken on these pleas. The cause was tried before Mr. Justice Coleridge, at York, and in consequence of the form of the pleadings the defendant began, and called witnesses to prove the user. The witnesses proved a user for a great number of years, sufficient, so far as remoteness of time was concerned, to support either of the pleas; but he did not shew any user within the last four or five years before action brought. The road claimed by the plaintiff led from the Stone Booth estate to certain moors, three miles off, and had formerly been used for the purpose of getting peat from the moors. Latterly no peat had been got from these moors. The learned judge was of opinion that on account of the absence of user for the last four or five

years the defendant's pleas were not made out; and the plaintiff therefore had a verdict.

Mr. *Alexander* now moved for a rule to shew cause why that verdict should not be set aside, and a new trial granted on the ground of misdirection. It is sufficient to shew the origin of the user, and the uninterrupted enjoyment of it for a space of time more than forty or twenty years back. In *Payne v. Shedd*,^a a plea of twenty years' right of way under 2 & 3 W. 4, c. 71, was held not to be defeated by proof of an agreed alteration in the line of way, nor by a temporary non-user under an agreement. [Lord *Denman*, C. J.—Your argument would give you a right if at the distance of twenty years you could shew a user for one year, though there was then a non-user for nineteen years; and thus a non-user for nineteen years would in fact establish the claim. Mr. Justice *Patteson*.—The case of *Payne v. Shedd* depended on an agreement, and the non-user was accounted for by that agreement. That is not so here. Mr. Justice *Coleridge*.—In a case like that, you need not ask the jury to make any presumption, for the agreement would prove every thing.] There is no necessity to prove a user up to the very time of action brought. [Mr. Justice *Coleridge*.—You might as well argue that if you traced back a user for nineteen years, you might ask for the presumption of another year's user to be made in your favour; yet it has been decided that that cannot be done.] The non-user here arose from the circumstance of the existence of better means of conveying fuel to the defendant's house, so that for the last four or five years he had not been under the same necessity as before to send for peat from the moors. A cause of that sort will not put an end to an established user. If user up to the very day of action brought must be shewn, then the statute will become useless, and the best established rights of way may be defeated.

Per Cur.—User up to the very day of action brought is not required, but user up to a reasonable time must be shewn; and certainly three or four or five year's user cannot be presumed in order to support a plea of this kind.

Rule refused.—*Parker v. Mitchell*, E. T. 1839. Q. B. F. J.

Eschequer of Pleas.

SECONDARY EVIDENCE.—ATTESTED COPY OF DEED.—STAMP.

Where an original deed was not produced at a trial, secondary evidence was sought to be given of its contents by parol. Held to be admissible, although an attested copy was in existence, which was not admissible on account of an insufficient stamp.

This was a motion for a new trial, on the ground (among several others) of the improper reception of evidence. It was an action of ejectment, and at the trial it became necessary on the part of the plaintiffs to prove a deed executed in 1789, in pursuance of a power, and attested in a particular manner prescribed thereby. The deed being in the possession of

a privileged person, who refused to produce it, the counsel for the plaintiff proceeded to give secondary evidence of its contents, and for this purpose tendered in evidence an attested copy, which, however, was found to be inadmissible for want of a stamp. On this it was proposed to prove its contents by parol evidence, which was accordingly received, and the jury found for the plaintiff.

Adams, Serjt.—An attested copy is better evidence of the contents of the original than parol evidence can be, and therefore renders the latter inadmissible when the former is shewn to be in existence. *Villiers v. Villiers*,^a *Munn v. Godbold*.^b In the case of *Doe d. Rowlandson v. Wainwright*,^c where the question was, whether it was competent for a party who relied on a deed of feoffment, the original of which the defendant refused to produce on notice, to prove its contents by means of an abstract, or whether he ought not to have given in evidence an examined copy; the Court of Queen's Bench refused the rule on another ground, saying that they were unwilling to pronounce an opinion on the question, although they seemed to intimate that a copy ought to have been produced.

Alderson, B.—The Court there refused to go into this question, because there was another plain ground for decision.

Lord Abinger, C. B.—No rule can be granted on this point. There are no degrees in secondary evidence; a party who cannot produce the original of a written instrument on which he relies, may give parol evidence of its contents; but if it should appear from the parol testimony of the witnesses thus adduced, that there is some better species of secondary evidence in existence, that is a fact from whence the jury may consider whether they will not presume against him that the evidence thus suppressed would be hostile to his case. But the law makes no distinction among the different kinds of secondary evidence with regard to admissibility. In those cases where it becomes requisite to prove the contents of records and other public documents, copies are allowed as primary evidence, but this is on public grounds; as the law in these matters of public concernment deems it advisable to give credit to the sworn testimony of the individual who produces the examined copy.

Purke, B., Alderson, B., and Rolfe, B., concurred.

Rule refused.—*Doe d. Gilbert and others v. Ross*, E. T. 1840. Exch.

FURTHER ADMISSION OF ATTORNEYS.—*Trinity Term.*

John Key Matterson, York, and 31, Liverpool Street, Gray's Inn Road.

Articled to John Blanchard, York.—Dated 5 May, 1840. By Rule, 2d May, 1840.

^a 2 Atk. 71.

^b 3 Bing. 292.

^c 5 Ad. & El. 520.

James Edward Norris, the younger, Halifax, Yorkshire, and 4, Verulam Bldgs., Gray's Inn. Articled to James Edward Norris, of Halifax aforesaid.—Dated 5 May, 1840.

By Rule, 2d May, 1840.

NOTES OF THE TERM.

NEW QUEEN'S COUNSEL.

Robert Baynes Armstrong, Esq., of the Northern Circuit, called to the Bar 23d June, 1814. George James Turner, Esq., of the Chancery Bar, called 6th July, 1821.

David Dundas, Esq., of the Northern Circuit, called to the Bar, 7th February, 1823.

Richard Bethell, Esq., of the Chancery Bar, called 28th November, 1823.

We have placed these gentlemen in the order in which they were called to the Bar. See *The English Bar*, published for the Proprietors of the Legal Observer.

NEW MASTER OF THE EQUITY EXCHEQUER.

The Hon. Robt. Scarlett has been appointed a Master of the Court of Exchequer on the Equity Side, in lieu of Jefferies Spranger, Esq., deceased.

ARREAR OF JUDGMENTS IN THE HOUSE OF LORDS.

We understand that many of the parties engaged in appeals to the House of Lords suffer great inconvenience and loss by the delay which occurs in pronouncing judgment on cases which have been heard. It is to be hoped that the Law Lords will keep up the ancient character of this High Court of Judicature. A celebrated advocate once reminded the House that it *used* to be just. We need not say that speedy justice is preferable to tardy justice.

THE EDITOR'S LETTER BOX.

A CORRESPONDENT states that the names of a solicitor and a conveyancer are placed on the door of their office, and he understands that these gentlemen have formed a partnership with each other. Our Correspondent states that he had himself been desirous of forming a similar connection, but wishes our opinion upon the subject. There can be no doubt such a partnership is illegal, and that the attorney allowing the conveyancer to conduct business in his (the attorney's) name, and to participate in his profits, will subject himself to be struck off the roll, and the other party will be liable to be committed to prison for twelve months.

We must beg to refer O. P. T. and A. H. B. to the under-treasurers or stewards of the several Inns of Court, or to "The English Bar," published for the Proprietors of this Work.

The letters of J. N.; "a Subscriber;" G. H.; B.; "Legalis;" and "Philoletus," have been received.

. No material change has taken place in the Bills relating to the Law since our last number. The second reading of the Equity Reform Bill is appointed for next Monday.

The Legal Observer.

SATURDAY, MAY 16, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LORD CHANCELLOR'S BILL FOR CHANCERY REFORM.

THE Lord Chancellor brought forward the Bill for the Reform of the Courts of Equity, for a second reading on Monday last. He first presented a petition from fifty solicitors practising in that Court in its favour, and then proceeded at great length to explain and defend its provisions. We shall briefly review the principal arguments used in favour of, and against the Bill, which were urged in the course of the debate.

In the course of the debate, its provisions were classed under three heads: 1. The abolition of the Equity Exchequer. 2. The alteration in the Judicial Committee of the Privy Council; and 3. The appointment of two additional Judges in the Court of Chancery. Of each of these in their order. 1. We have already expressed our approbation of the abolition of the Exchequer. The reasons for it are, that this Court is not resorted to as an Equity Court by the suitor. Even in the time of eminent equity Judges, as Chief Baron *Richards* and Chief Baron *Alexander*, the business did not materially increase. The emoluments of the solicitors are larger—there is no arrear of business, and therefore no delay; yet the suitors, that is to say, their professional advisers, prefer the Court of Chancery; and while the business of the latter Court has trebled since the beginning of the present century, and doubled since the appointment of the Vice Chancellor; that of the Exchequer has remained stationary. Why is this? the reasons, we conceive, are, that the practice differing from the Court of Chancery, is imperfectly understood; that the presence of the Judge is not to be re-

lied on, as he may be on the circuit; that the bar is inferior, or at any rate unsettled, and their attendance uncertain. The unpopularity of the Court is, however, in fact, admitted; but then it is said by some, assimilate the practice to that of the Court of Chancery, and establish a permanent Equity Judge. But surely these two objects may be better effected by the abolition of the Equity Jurisdiction, and by transferring it to the Court of Chancery. Why leave this fragment of Equity Jurisdiction in the Common Law Courts? What good purpose does it serve? If it be well that a Court of Law should have one of its Judges an Equity Judge, why should the Queen's Bench and Common Pleas be without one? The advantages of the transfer would be, that all the Equity Judges having their sittings in one jurisdiction—being as it were of one family, with a well-regulated appeal—there would be frequent communication between them. It is well that the appeal should lie from an inferior to a superior Judge of the same Court; but it would not be fitting that the appeal should lie from a Superior Court of Common Law to the Court of Chancery. We do not think that any alteration or modification will have the effect of drawing the Equity Court of Exchequer into the full stream of business. It stands in an isolated situation—the most eminent men at the bar will not attend there regularly. For these reasons we shall rejoice at the abolition of the Exchequer, and the transfer of its business to the Court of Chancery.

2. The alteration in the Judicial Committee of the Privy Council. This part of the bill, which places the Master of the Rolls as the Vice President of the Privy Council, has been the most objected to in the bill, as depriving the suitor of the services

* See 19 L. O. p. 385.

of this judge, for the time which he is occupied in the Privy Council. We admit the force of this objection. But the difficulty is to find any Judge so fitting as the Master of the Rolls. In the first place, this Judge has for many years presided in the Privy Council on many of its sittings, and therefore there is no new practice thus introduced. Then it has been calculated that the Judicial Committee sits about fifty days in the year, and it would not, therefore, do to appoint a separate Judge for this office, as he would be unoccupied during the greater part of the year. "Where, then," as the Master of the Rolls said, "can you best borrow a judge?" We are disposed to think that, on the whole, there is no Judge so fitting as the Master of the Rolls; and it will be remembered that it is something in its favour that the present Master is willing to undertake the duty.

3. Thirdly, as to the appointment of two additional Judges; and as to this, we have no hesitation in saying that two at least are absolutely necessary. It is to be remembered that if the time of the Master of the Rolls is to be taken up regularly by the duties of the Privy Council, it is hardly a gain of *one*. If the Equity Exchequer be abolished, one of the new Judges balances the loss in the Equity Exchequer; and the other will only supply the place of the Master of the Rolls for that part of the year in which he sits at the Privy Council. The judicial power, therefore, of the Court of Chancery, will in fact be but little augmented. It will be concentrated and rendered available to the wants of the suitor, but there will be but little increase.

And now one word as to the debate. The speech of the Lord Chancellor was a masterly and complete exposition of the whole plan: indeed, it exhausted the subject; and when Lord Lyndhurst seconded it, "cordially seconded it," we were in hopes that the success of the bill was secured. It cannot, however, be denied that the speech of the latter noble and learned lord, except at the commencement, was a powerful argument *against* the bill. His Lordship declared that all that he said was intended only by way of doubt and suggestion; but certainly, had he been its bitterest enemy, he could not have been more industrious in urging every possible point which could be made against every portion of the proposed scheme—he objected to the abolition of the Equity Exchequer, although he himself proposed it in 1829. He objected to the removal of the Master of the Rolls to the

Privy Council, although he suggested no more fitting person; he objected to the appointment of two additional judges, admitting that *one* should be appointed; and we have shewn that in fact the present bill does give only *one* additional Judge. He declared, however, that he should go into the committee unbiassed as to all these points; and Lord Langdale boldly invited him to try all or any of them in the fair field of argument. We need hardly say that we have the greatest respect for the character, the judgment, and the talents of Lord Lyndhurst; and we cannot think it possible that under the pretence of favouring the measure, he is really intending to *smash* it in detail. We have all along declared our opinion that the profession and the public are in favour of the bill. They take it as a remedy for one of the greatest evils of the Court of Chancery, and we are persuaded they would feel the bitterest disappointment if it is to be frittered away in committee, and so damaged that it must be withdrawn. It is by no means perfect, but it is the best that can be had; and on Lord Lyndhurst must rest the responsibility if it do not pass in the present session. We do therefore firmly rely on his assurance of impartiality. We were glad to hear him treat the idea of Sir Edward Sugden, that all must be done or nothing, as "idle and chimerical;" and when he so clearly sees the evil under which the Court of Chancery labours, we do with all respect entreat him to allow us to have a bill which will go far to remedy a very great part of such evil. In the mean time we exhort the profession, individually and collectively, to petition in favour of the bill.

THE LAW OF JOINT-STOCK COMPANIES.—No. II.

ACTIONS BY AND AGAINST COMPANIES.

WE give some late cases on this head. By the Cheltenham and Gt. Western Union Railway Act, 6 Wm. 4, c. 77, it is enacted, that in an action for calls on shares in that company, the book of shares under the seal of the company, shall be *prima facie* evidence that a party is proprietor of shares. In an action for a call on shares in the company made in October 1836, the book mentioned in the act was produced by the secretary of the company, and in it the name of the defendant was inserted as the proprietor of ten shares, and it was proved that these entries in the book were made before the end of September 1836, but that the seal of the company was not affixed to the book till the 3d of November in that year. Lord

Denman, C. J. held, that there was no evidence to go to the jury that the defendant was a shareholder at the time of the call in October, and directed the plaintiff to be nonsuited, with liberty to move to set aside the nonsuit. [The plaintiff did not move.] *Cheltenham Railway Company v. Price*, 9 C. & P. 55. In order to let in secondary evidence of the minute books of an intended company, it will be sufficient to prove that four months before the trial, the late secretary had the books in a desk at the office of the company, and that he then gave up the key of the desk to the manager of the company, who acted for the directors. *Bell v. Francis*, 9 C. & P. 66.

It is not unusual to stipulate in a deed of settlement that a shareholder shall not be at liberty to inspect the books of the company, but notwithstanding this clause, it has been doubted whether a shareholder could not compel the production of the books in an action against the company. In the case of *Stubbs v. Lister*, cit. arg. in *Hull v. Connell*, 3 Yo. & C. 710, a bill was filed by the sub-officer of the Northern and Central Bank, against the public officer of the Liverpool Bank, alleging that certain shares in the Liverpool Bank of which the former bank claimed to be assignees, were forfeited, and praying that those shares may be sold. The Liverpool Bank was sued in respect of certain alleged transactions between them and the shareholders, and evidence as to this point was sought from the books of the Liverpool Bank. But the public officer of that bank stated by his answer that the shareholder was bound by his contract with the bank not to inspect the books, and upon a motion by the plaintiff in that cause for the production of those books, the objection prevailed, and the *Vice Chancellor* refused the motion. But in a subsequent case in the Exchequer, where a similar objection was made, the *Lord Chief Baron* pronounced the following judgment:

"The third objection (there were other points in the case) is of more importance, because it is said to be supported by a decision of the *Vice Chancellor*. If I could be sure that the present case was similar in all its circumstances to that before his honour, I should feel bound, out of the respect which I owe to that learned person, to take time for consideration before I ventured to overrule his decision. But at the same time I think Mr. Anderson has given the true solution to the difficulties, if any, in this case. The effect of the clause in the deed of settlement to which reference has been made, is the same as if the partners had agreed not to go to law or equity, but to submit their differences to arbitration; and such a clause, we all know, is no bar to any proceedings at law or in equity between the partners. Besides, I can well understand why, in the case of a great body of persons like the present, of whom many might be actuated by mere idle motives of curiosity, and many might be more interested in litigation than in the prosperity of the company, it would be much more reasonable to adopt a clause of

this nature, than in the case of a common partnership. But this does not stop the course of proceedings in courts of justice. Suppose a *subpoena duces tecum* issued to a party to produce books: could he say, I can produce them, but I am not bound, because the plaintiff has entered into an agreement for their non-production. Could it be said that the books were no evidence in such a case? But there is a circumstance which distinguishes this case from that before the *Vice Chancellor*, because here there is another cause, and in fact this bill recites another cause, brought by the company, out of which the present proceedings have arisen. This bill is filed for the purpose of seeking evidence to rebut the charge made against the plaintiff by the company; and that evidence being in their books, I think he has a right to have it notwithstanding the agreement which is said to form part of the foundation of the society. That being so, it follows that this is a mere case for relief and production of documents, and here the documents are as much the plaintiff's own as the other parties. He has an equal interest in them. Suppose he had no original interest in them as a member, and a bill for an account had been filed against him, and he had filed a cross bill to obtain evidence, he would have had a right to their production. A *fortiori*, has he that right when he himself is a member, and has in that character an interest in the books? *Hall v. Connell*, 3 Yo. & Col. 707.

In our next article on this subject, we shall collect the cases as to the liability of directors, shareholders, and others.

THE PROPERTY LAWYER.

VENDOR'S LIEN.

WHERE a vendor delivers possession of an estate to a purchaser, without receiving the purchase money, equity, whether the estate be or be not conveyed, and although there was not any special agreement for that purpose, and whether the estate be freehold or copyhold, gives the vendor a lien on the land for the money, 3 Sug. V. & P. 183, ed. 100. And this equitable lien prevails against the purchaser and his heir, and all persons claiming under him, with notice, although for valuable consideration, *Mackreth v. Simmons*, 15 Ves. 329; *Winter v. Lord Anson*, 3 Russ. 493. But it would not prevail against a *bond fide* purchaser without notice, 3 Sug. V. & P. 214. This principle, which is well established in equity, will also be recognised in a court of law as is shewn by a recent case.

The lands originally belonged to William Abell, who died and of whose family Counsell, one of the lessors of the plaintiff, had bought it in the year 1814. In the month of August 1819, John Abell, the son of William Abell, being desirous to re-purchase it of Counsell at the same price Counsell gave for it, an agreement was made between them for the re-pur-

chase, upon which a deposit of 10*l.* was paid, and John Abell let into possession. No more purchase money was paid, neither had any interest or rent been paid, although John Abell and those who represented him had been in possession of the property ever since. On an ejectment being brought against the heirs of the purchaser, it was attempted to prove adverse possession by cutting down timber and the like, and by proving that a fine was levied by John Abell. *Alderson*, B. said: "You come in under an intended purchase, and I think that all this is not adverse. A purchaser thus in possession is in equity the owner of the land, with a liability to pay the purchase money; and his cutting down trees is consistent with his holding in that character, and not adversely to the right of the vendor, to whom at law he is tenant at will. The only question is whether there was an adverse possession. These parties made a bargain for a purchase, and John Abell is let into possession as a purchaser. You will say (to the jury) whether he was in adverse possession or not. If he were not so, you will find for the plaintiff." *Doe d. Counsell v. Caperton*, 9 Car. & P. 112.

PUBLIC MEETING FOR THE REMOVAL OF THE COURTS FROM WESTMINSTER.

On Friday the 8th instant, a numerous and highly respectable meeting of the solicitors and attorneys of the metropolis was held in the Hall of the Incorporated Law Society, in Chancery Lane, to take into consideration whether any and what measures should be adopted by the members of the profession, in consequence of an opinion very generally expressed in favour of the removal of the courts of law and equity from Westminster-hall to Lincoln's Inn Fields.

Mr. Teesdale, the Chairman of the Committee of management, having been called to the chair, briefly stated the object of the meeting, and observed it was not confined to those who were members of the Law Society, but extended generally to all the members of the profession residing in the metropolis.

Mr. Rizard said it had long been felt by all the members of the legal profession—whether attorneys or barristers, and whether living in London or in the country—that there could not be found a more inconvenient building than that which comprised the present courts of law and equity at Westminster. The objection to it was of two descriptions; first, to its situation, and secondly, to the nature of the building itself.

The present courts were commenced about the year 1820, and he remembered to have heard *Mr. William Harrison*, the Queen's counsel, say that as he was going to Westminster the Chancellor of the Exchequer met him,

and asked him to go into the Treasury, and look at the two plans of the intended new building. He went in, and there met Sir John Soane, and they looked over the plans. After a good deal of discussion they all agreed in favour of the one recommended by the architect, but when the Chancellor of the Exchequer inquired what would be the cost, and when he was apprised that the adoption of that plan would be 50,000*l.* more than the adoption of the other, he immediately said, "We need not give ourselves any further trouble—take the cheapest;" and Sir John Soane was directed to go to work. Scarcely had the walls been built up, and the roof put on, when every one cried out against the plan. The subject was taken up in Parliament, and a committee appointed, and the result was, a great part of the building was pulled down and rebuilt; and there vanished at once the Chancellor of the Exchequer's saving of 50,000*l.* But when the committee came to prescribe to Sir John Soane what the new plan should be, that eminent architect said that, in so restricted a site, it was impossible to erect a convenient building; but the House of Commons persisted—they would not have Palace-yard destroyed, nor have a new building which did not agree with Westminster Hall on the one side, and Westminster Abbey on the other. "But," said Sir John Soane, "my professional character is at stake, and though you may prescribe to me what sort of a building shall be erected, I must take care of my character." And accordingly he presented a protest, in the shape of a petition to the House of Commons against the proposed plan. However, it was finally determined that the restricted plan should be adopted.

Soon after this it was found necessary, from the great increase of the business of the court, that the Master of the Rolls should sit in the morning at Westminster, instead of the evening in Chancery-lane. He was first put into a committee-room in the House of Commons, and afterwards upstairs in a room, the ceiling of which any man might almost reach with his hand, and the approach to which was a disgrace to a court of justice. The increase of the wealth and population of the country demanded new judges in the courts of law, one in each court being required to sit at *Nisi Prius*, while the others sat in Banco. The small and inconvenient room used as the bail court in the Queen's Bench was now made the new *Nisi Prius* Court. For the court of Common Pleas there was no room; the *Nisi Prius* judge was therefore sent over to the Sessions house. The Court of Exchequer wanted similar accommodation, but they could not have it.

This was the state in which the present Courts were, and as to their inconvenience he could not find a dissentient voice. He was sorry to say there were some persons who entertained old-fashioned attachments to Westminster Hall; and who seemed to fancy that a verdict would be good for nothing, and a decree of very little value, if they were not pronounced under that beautiful arch: but they who looked to the use and convenience of the

Courts rather than to such ideas, were of opinion that those notions, however valuable they might be on a question of taste, could not be brought to bear when all the inconveniences of the present building on the one hand, and all the advantages of removal on the other, were taken into consideration.

But there now arose a further difficulty. The business of the Court of Chancery had gone on increasing so fast, notwithstanding the zeal, energy, and activity, of the present equity judges, that the arrears of business had increased beyond all precedent, till at last there was not a dissentient voice as to the necessity of additional judges being appointed in that Court. Where were these additional judges to sit? Several of the Inns of Court had offered their halls for the purpose. He wanted nothing better than that as a proof that this was the best part of the town in which justice could be administered. But could the business be transacted in those halls? One great object was to have all the Courts together; for although the senior counsel might confine themselves to one Court, the junior counsel must move about from Court to Court; and would it be right for gentlemen to be running backwards and forwards from Lincoln's Inn to Gray's Inn, across the crowded thoroughfares of Holborn and Fleet Street, in their wigs and gowns? The offer, however, of the use of these halls was not to be disregarded, because while the new Courts were being built, the halls might afford temporary accommodation.

Impressed with all these considerations, he was much struck with a very judicious and sensible pamphlet on the subject by Mr. Gem. The perusal of it warmed and increased his zeal, and he thought the best course to attract attention was to get a *plan* prepared by some man whose name should carry authority with it. The gentleman, he hardly need say, to whom he alluded was Mr. Barry. Besides his talent as an architect, a further recommendation of him was, that he was in constant communication with the government; and as he was building the new houses of Parliament, he would best know how to make the best use of Westminster Hall for other purposes. Mr. Barry was totally unknown to him, except as every one else knew him—namely, as the designer of the two Houses of Parliament, and of those two beautiful specimens of building—the Travellers, and the Reform Club. He went to Mr. Barry and explained his notions. That gentleman immediately entered into them with the greatest possible spirit; he said he would take any pains about it, except that nothing should tempt him to enter into competition. He had done so thrice, and on those three occasions succeeded; but it was a system productive of so much inconvenience, canvassing, and squabbling, that he meant to rest upon his character, and never embark in a competition again. “I will look (said Mr. Barry) at the Courts at Westminster, and at the proposed site in Lincoln's Inn Fields, and will prepare a plan, and if I am invited by the profession to present the plan, they shall have it, and it shall

be very much at their service, without any charge or expense of any kind.” About a fortnight afterwards he saw Mr. Barry again, who told him he had taken a view of the ground, and measured the area, marked out the improved means of access to it, and ascertained what accommodation it would afford, and the result was that in his opinion it was the finest site in Europe, and that there never was any thing so well calculated for the object desired. He then produced the plan which he had in the meantime prepared. The elevation was very handsome, and exceedingly well suited to the object. It was in a plain, substantial, Grecian style of architecture. There was a colonnade supported by Doric pillars, surrounding the whole. There were five Courts of Chancery, two Courts of Queen's Bench, two Courts of Common Pleas, and two Courts of Exchequer. There were retiring rooms for each of these Courts, separately for the judges, the barristers, the solicitors, the jurors, the witnesses, and the parties. There was a great hall in the centre around which all these Courts were, the area of which was wider than, and nearly as long as, Westminster Hall. There were coffee rooms and consultation rooms to each Court, and there was a library to each Court; in short, there was everything that could by possibility be suggested.

Then, there was a *depository for public records*; for it was curious enough that the government had already consulted with Mr. Barry for a place to keep the records in. Now he had said that he should make the best depository for records that ever was made in this new building, and that without any additional expense; for as the building would all be upon one floor, he should want a flight of steps to it. This would give so much space below; where there would be a good current of air, that it would form an excellent place to put the records in. The cells thus formed would be covered with groined arches, and so be made fire-proof. There were to be four principal entrances to the building, which would be surrounded with a carriage drive; besides which there would be preserved a pleasure garden of more than one hundred feet in depth all round the building; the Courts being within and thereby removed from all noises from without.

Having thus provided for their principal object, his next plan was to consult the high legal authorities upon the subject. He first applied to the *Lord Chancellor*, who said he would present their petition with great pleasure. He would not pledge himself to support the scheme, but would give it due consideration. None, he said, could be more interested in keeping the Courts at Westminster Hall than himself for his own personal convenience, but he remembered, when he was at the bar, the inconvenience he felt from the Courts being at Westminster, and therefore no personal considerations should prevail with him against the demand of the profession, and the convenience of the public. He had authority for stating that the *Master of the Rolls* was quite friendly to the measure, conceiving it to be beneficial

to the profession as well as to the suitor. The *Vice Chancellor* was also favourable to the scheme. He had applied to the *Attorney and Solicitor General* to present their petition to the House of Commons. The *Attorney General* expressed his readiness to do so; but said his old attachment to Westminster Hall was not worn out; he was, however, quite ready to have the subject considered. Sir Thomas Wilde's answer was somewhat to the same effect. What! he remarked, "remove from Westminster Hall! How can you go on without Westminster Hall?" However (said he) if its convenience can be shewn, I will give it my most earnest support.

He had thus provided a plan, and secured the presentation of their petitions; for it was necessary the profession should petition, both from town and country; for there were still some strong feelings which they would have to counteract. There was a notion abroad in this country, that it was quite horrible to carry the Courts of Law away from Westminster; and that the dignity of the profession would be very much lowered by the separation of the Courts of Law from the two Houses of Parliament. They must meet all these objections by showing the great inconvenience arising from the present situation of the Courts.

The learned gentleman then detailed a variety of inconveniences resulting from the Courts being at so great a distance from the Inns of Court. One was the great loss of time occasioned to the solicitors and attorneys by going to and fro, and in being detained in the Courts waiting for their business to come on. This was injurious to the suitors and to their other clients, whose affairs were in the mean time delayed. Indeed, the time of the professional man was the time of his client; and the public suitor was really more interested in this matter than the solicitor or the attorney. The same evil consequences resulted with respect to the members of the *bar*; for although some of the leaders might be influenced by the notion that some sort of ideal splendour was attached to the Courts of Law by their being united to the Houses of Parliament, yet the juniors would readily confess that they felt all the inconvenience of these Courts being at such a distance from their chambers. He asked an Equity draftsman, the other day, whether he had prepared a certain bill for him? The reply was—"I have not touched your bill. I have been three days at Westminster waiting for a cause which has not come on yet." If the Courts had been near his chambers, he could have gone on drawing not only that bill but other bills. The delays in Chancery were greatly increased by this circumstance alone. Ought such delays, which might be so easily remedied, he suffered to continue?

The next consideration, and which was a grave one, was to provide funds necessary for the work. He thought those funds might be raised without touching the pockets of the profession, or of the suitors, and still more without going to the Chancellor of the Exchequer. If, indeed, they went to him, such

obstacles would be thrown in their way that they would never gain their object. But there had sprung up a fund which might most judiciously be appropriated to this purpose. Notwithstanding he saw the solicitor of the Suitors' Fund present, he should, even against his friends' remonstrance, recommend an application to the Suitors' Fund. He believed there was very nearly 40,000,000*l.* of money in the Court of Chancery, and at the disposal of that court. Was it then, when they were talking about the due administration of justice in this great country, and when they saw such important interests at stake, worth a moment's consideration whether they laid out one, two, or three hundred thousands upon an object which was to promote the interests of all who were concerned in that administration? The surplus unclaimed part of this fund was 2,500,000*l.* To the fund would be added, if the Equity Court of Exchequer should be annexed to the Court of Chancery, 2,000,000*l.* more. Suppose they did apply a portion of this money to the new building, what loss would the fund sustain? None. They all knew the way in which the fund was growing up, and that the money never would be asked for. But, to prevent all apprehension, it was usual to insert a clause in every bill for appropriating portions of this fund, that if the suitors should demand it, the public would be answerable for it. But there never by possibility could be a claim for it. The only objection he heard was this; "Good God! take the Chancery money to provide for the King's Bench, Common Pleas, and all the rest of them!" There might be some force in this; he would therefore just remark that the surplus of the fee fund of the three Courts of Queen's Bench, Common Pleas, and Exchequer, amounted to 20,000*l.* a-year. Why should not these Courts contribute their quota? Mr. Barry's estimate was 175,000*l.*, say 200,000*l.* If there were to be two additional Masters in Chancery, they would require more buildings. The greatest accommodation would arise from adding rooms to the new building for the Masters in Chancery, the registrars, and the accountant general. This would make the estimate amount to 300,000*l.* If it did he should not be alarmed at it. The expenditure of the money would do good. Nine tenths of it would be paid for labour, and the rest for articles of useful trade. He thought this much better than locking the money up in the Bank of England. While its expenditure must produce great individual advantages, it could not by possibility be attended with inconvenience to any one. He hoped he had made the question clear to all, and he would now read the resolution he had to propose. The learned gentleman then read a statement in the form of a resolution, embodying the topics of his speech, and concluding with this further resolution—"That a committee be formed to give effect to this resolution, and that such committee have power to add to their numbers, and that three be a quorum."

Mr. *Freshfield*, M. P., very cordially seconded

the motion. His friend Mr. Vizard had ably condensed the important information he had collected, and the facts stated in the resolution would enable the public to see that the proposition was clearly borne out. The measure was for the interest, not only of the present suitors, but of those who may become so, and even of those who may be prevented becoming suitors. The solicitor would be enabled calmly to consider at his office the interests entrusted to him, and he might be called in to Court in a moment, and thus his personal attention both in Court and at chambers, would be secured and delay prevented.

The resolution was then put and agreed to unanimously.

Mr. *Shadwell* said that it being the unanimous opinion of the meeting that the old courts should be abandoned, and new ones erected, it became necessary to consider the proper persons to be named to erect them. They could hardly select a better person than Mr. Barry. He therefore would move that the committee do apply to Mr. Charles Barry, and request him to furnish a plan of the elevation of the proposed building, and an estimate of the expence of the erection. It had been commonly thought that almost all the judges had set their faces against this measure. But they had heard that the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor were in favour of it. He could assure the meeting, that having had a communication with the Vice Chancellor on the subject, he was entirely in favour of the plan.

Mr. *Amory* seconded the resolution. He would only make one remark: If professional gentlemen residing in Westminster had good reason for supporting the removal of the Courts from Westminster Hall, those who, like himself, lived in the city, must have a still stronger reason for advocating that measure.

The resolution was then put and adopted unanimously.

Mr. *Richard White* moved that petitions be prepared, in conformity with the resolutions, and presented to both Houses of Parliament.

Mr. *Thomas Clarke* seconded the motion, which was agreed to.

Mr. *Cooper* said, a large class of the profession lived in the vicinity of Lincoln's Inn Fields, who were naturally anxious to preserve that beautiful space where the pure air could be enjoyed. He begged to ask whether it had occurred to the committee the probability of removing many of the low dwellings that were between Carey Street and the Strand, and forming a convenient site for the New Courts without occupying Lincoln's Inn Fields?

Mr. *Vizard* said the neighbourhood of the Rolls had been suggested, but it did not afford space enough; and if it did, the expence would be enormous. Property consisting of small houses was the most extravagant that could be purchased.

After some further conversation,

The *Chairman* said the committee would no doubt pay attention to every suggestion that

might be made as to the most eligible site that could be selected.

Mr. *Metcalfe* moved, and Mr. *Martineau* seconded, a resolution that the Lord Chancellor should be respectfully requested to present the petition to the House of Lords, and the Attorney General and Solicitor General to the House of Commons, which was agreed to.

Thanks were then voted to the chairman and to Mr. Vizard, for their services in the promotion of the great object the meeting were assembled to promote.

STAMPING FOREIGN BANK-LETTERS OF ATTORNEY.

THE very recent rule of the Bank, on which they are said to be acting upon the opinion of the law officers of the Crown, that foreign letters or powers of attorney to transfer stock or receive dividends should be stamped, after a long practice to the contrary at the Bank and the South Sea House, is likely to occasion much confusion delay, and trouble, both here and abroad. The facility of transfer and receipt of dividends is of immense importance to our funded interest and the well-being of this great nation.

The law upon the subject appears to be this:—

By the British Stamp Act, 55 Geo. 3, c. 114, Sched. part 1. Letter of attorney for the sale, transfer, acceptance, or receipt of dividends of any of the government or parliamentary stocks or funds the stamp duty of 1*l.*:—Exemption from the preceding and all other stamp duties, of letters of attorney for the receipt of dividends of any definite and certain shares of the government or parliamentary stock or funds, producing a yearly dividend of less than 3*l.*

By the Irish Stamp Act, 53 Geo. 3, c. 78, sched. part 1. Letter of attorney for the sale, transfer, acceptance, or release [receipt] of dividends of any government, parliamentary, or other stocks or funds, the stamp duty of 10*s.*, (but there is no exemption of letters of attorney for the receipt of dividends under 3*l.*, which should be allowed for the benefit of our Irish funds.

It is suggested that for the purpose of remedying this evil, a short bill should be brought, without loss of time, into Parliament, reciting so much of the Stamp Acts of both Great Britain and Ireland, as is above stated, that a practice has long existed at the Bank and South Sea House to pass foreign letters of attorney, though they

have not been stamped, and that doubts have arisen whether letters of attorney, executed out of Great Britain and Ireland to transfer stock and receive dividends in the public funds of Great Britain and Ireland should not be stamped: And that it is expedient to free from doubt and legalise the practice above referred to. Then should follow two enactments, 1st, that such letters of attorney, executed out of Great Britain and Ireland, should be exempt from stamp duty; 2d, that all letters of attorney to receive dividends under 3l. in the Irish funds, should be free from stamp.

ADMISSION IN CHANCERY THE DAY AFTER TRINITY TERM, 1840.

Charles Henry Cooper, Cambridge.

Articled to William Jeary Cannon, Cambridge.

This person must be examined under the Regulations of the Master of the Rolls, at the Rolls House, in the presence of one of the Masters in Chancery, and a Sworn Clerk in Court, as well as of four solicitors. It does not appear why all the machinery of Examination should beset to work for trying the merits of this solitary Candidate, when he might be equally well and more conveniently examined with a hundred and more others at the Law Society.

CANDIDATES WHO PASSED THE EASTER TERM EXAMINATION, 1840.

<i>Name of Applicant.</i>	<i>Name & Residence of Attorney, to whom articled, assigned, &c.</i>
Adamson, William	John Adamson, Newcastle-upon-Tyne; John Trotter Brockett, Newcastle-upon-Tyne.
Angell, Thomas John	John Phillips Beavan, 30, Sackville Street, Piccadilly.
Astley, Henry Edward	Thomas Macauley Cruttwell, Bath.
Bailey, Elijah Crosier	James Winter, Norwich.
Baines, John George Fuller	Frederick Hayward, Needham Market.
Baker, Richard Dod	John Cooper Beckett, of Brooklands.
Ball, Edwin	Robert Gillam, Worcester.
Barwick, John Marshall	Matthew Bloome, Leeds.
Bateson, William Gandy	Thomas Carson, Liverpool.
Berry, Edward	Samuel Stoue, Leicester.
Bloxham, John Richard	John Stubbs, Birmingham, Warwickshire.
Boodle, James	William Huberte Gyde, Cheltenham.
Bristow, Alfred Rhodes	Robert Christopher Parker, 2, Thornton Row, Greenwich.
Brodrick, George	William Brodrick, Bow Church Yard.
Browne, Charles	Henry Philipps, 4, Size Lane.
Browne, Robert	Abraham Flint, Uttoxeter, county Stafford; assigned to John Michael Blagg, Cheadle.
Bush, John Alderton	John Bush, Bradford, county Wilts.
Chandler, Arthur	William Henry Calhoun, Arundel; assigned to George Balchin, Arundel.
Chater, William	Thomas Chater, Newcastle-upon-Tyne.
Childe, Harry Joseph	Joseph Shipton, Warwick; assigned to William Edward Buck, Warwick.
Collins, George Browne	Thurston Collins, St. Columb.
Goles, Robert	Alfred Phillips and James Wason, Bristol; assigned to John Whittington, Bristol.
Cooper, Henry Roberts	George Cooper, East Durham, Norfolk.
Cross, Seth	Edward Newman, Barnsley.
Cullen, William Henry	Stephen Plummer, Canterbury.
Davies, Henry Touchet	Thomas Macauley Cruttwell, Bath.
Devey, Frederick William	Frederick Nicholls Devey, 34, Ely Place.
Dickenson, Daniel	Robert Francis Yarker, Ulverston, county Lancaster
Douglas, Charles	John Cutts, Witham.
Downman, William, the younger	William Downman, the elder, Sudbury.
Empson, Henry	William Charles Empson, Leamington Priors.
Fall, John	Bernard Maynard Lucas, Chesterfield; Henry Ingledew, Newcastle-upon-Tyne.
Fewkes, Paul	Joseph Parkes, 21, Great George Street, Westminster.
Field, William	Henry Downe Barton, Exeter.
Ford, Henry	Archibald Law, Portsea.
Gant, John Castle	Anthony Brown, Mincing Lane.
Gay, William	Phillip Wilson, King's Lynn.
Gurney, John	William Paul, the younger, Truro.
Haigh, John L.	Edward Parker, Selby.
Hamley, Edmund Gilbert	Edward Pearce, Bodmin; Henry Coode, 8, Guilford Street, Russell Square.

<i>Name of Applicant.</i>	<i>Name & Residence of Attorney, to whom articulated, assigned &c.</i>
Harding, Henry	Thomas Harding, Newcastle-under-Lyme, Stafford; assigned to John Plant Harding, Burslem, co. Stafford.
Harrison, George	George Harrison the elder, Bishop Wearmouth; assigned to Joseph John Wright, Sunderland near the sea.
Haxby, Joseph Barber	Twisleton Haxby, Wakefield, county York.
Heald, Richard Henry	George Rawson, the younger, Leeds.
Hill, Granville Diggle	Thomas Macauley Cruttwell, Bath.
Hitchcock, William	Charles Hyde, Ely Place.
Holland, Thos. Moore Woollams	Thomas Bird, Upton-upon-Severn; assigned to Thomas Loftus, New Inn.
Holmes, Edward Carleton	William Holmes, Brookfield, near Arundel; assigned to Edward Bach Hillier, 39, Cumming Street, Pentonville.
Homes, William, the younger	William Homes, Poole End, near Ledbury; assigned to Thomas Jones, Ledbury.
Honnywill, William Henry	John Nicholetts, of South Petherton, county Somerset; assigned to Henry Seymour Westmacott, 1, Gray's Inn Square.
Hostage, John	John Finchett Maddock, Chester.
Ingram, James	George Abraham Crawley, 20, Whitehall Place, Westminster.
Jackson, William	William Dobinson, Carlisle.
Jessop, Francis Johnson	Thomas Fowke Andrew Burnaby, Newark-upon-Trent; assigned to William Edward Tallents, Newark-upon-Trent; and assigned to Godfrey Tallents, Newark-upon-Trent.
Johns, Henry Tremenhure	Henry William Johns, Blandford, county Dorset.
Justice, Thomas Francis	James Beaumont, 28, Golden Square; assigned to John Pike, 28, Golden Square; and again assigned to James Beaumont, 19, Lincoln's Inn Fields.
Jutsum, Edward Milener	David Jennings, 71, Whitechapel Road.
Kersteman, William	Michael Broadmead, Langport, Eastover.
Kingdon, Thomas	Edward Harley, the younger, Bristol; assigned to Alfred Lester, Sidmouth; re-assigned to Edw. Harley, of Bristol.
Kingdon, William	Nathaniel Overbury, 44, Friday Street; assigned to Edward Thomas Whitaker, 5, Gray's Inn Square.
Kingson, George Edwin	Charles Carter, the younger, Bideford.
Lamb, Charles	John Barber and Thomas Pasfield Davidson, Furnival's Inn.
Maples, Frederick	Thomas Frederick Maples, 6, Frederick's Place, Old Jewry.
Martall, Charles	George Pritchard, 28, New Bridge Street, Blackfriars.
Melland, William	John Cutts, Chesterfield.
Merriman, Frederick Ward	Thomas Baverstock Merriman, Marlborough, Wilts; assigned to Thomas Ward Blagg, St. Albans, Herts; and assigned to Samuel Benjamin Merriman, 25, Austin Friars.
Messiter, Malim	George Messiter, Frome; assigned to Edward Francis Fennell, 32, Bedford Row.
Meymott, William Joseph	John Gilbert Meymott, 86, Blackfriars Road.
Moultrie, Charles	John Allan Powell, 9, New Square, Lincoln's Inn.
Neville, Charles James	John Bridges, Red Lion Square.
Norris, Anthony	Horatio Nelson Fisher, 12, London Street, Fenchurch Street.
Ord, Charles Ovington	Henry Clarke, Guisborough.
Perry, Henry	Wilson Perry, Whitehaven.
Pilleau, William	Beriah Drew, 185, Bermondsey Street; assigned to George Drew, 185, Bermondsey Street.
Pope, Charles Lee	John Monckton, Maidstone.
Pott, Joseph Compton	William Woodgate, 3, New Square, Lincoln's Inn.
Powell, John	John Bird, Birmingham; assigned to William Dunn Wheeler, Birmingham.
Rendall, Alfred	Benjamin Bodenham, Kingston, county Hereford.
Roberts, Richard	William Palmer the elder, Birmingham.
Rogers, Francis	Edward Hearle Rodd, Penzance.
Robinson, Francis	George Stone, 36, Jermyn Street, St. James's.
Saunders, William	William Lawrence Bicknell, 57, Lincoln's Inn Fields.
Sedgley, Charles	William Hodgson, Carlisle; T. Briggs, Esq., 55, Lincoln's Inn Fields; and assigned to Thomas Houghton Hodgson, Carlisle.
Scudamore, Frederick	Robert Furley, Ashford; assigned to Charles Scudamore, Maidstone.
Sears, Henry	Thomas Walker, Dartford; Carey Bonham Hopkins, Dartford; and assigned to John Hayward, of Dartford.
Shackleton, John	William Hargreaves, Leeds.

<i>Name of Applicant.</i>	<i>Name and Residence of Attorney to whom articulated, assigned, &c.</i>
Shepherd, Mark	Edward Shearm, Stratton,
Simcox, Alexander	Clement Ingleby, Birmingham.
Simpson, George Septimus	Thomas Atkinson, Peterborough; assigned to Evan Morris, Temple.
Smith, Thomas	Richard Edgar Smith, 3, New Boswell Court, Lincoln's Inn.
Stevenson, John	George Waugh Stable, Newcastle-upon-Tyne.
Sumpter, William Richard	Charles Pestell Harris, Cambridge; assigned to Frederick Barlow, Cambridge.
Thompson, Thomas	Henry Ling, 34, Bloomsbury Square.
Thorp, Frederick William	George Game Day, St. Ives.
Tryon, Henry Curling	John Mercer, the younger, Ramsgate.
Turner, John Gillgrass	William Stewart, Horbury, near Wakefield.
Vrignon, Gabriel	Joseph Mountford, Exeter; assigned to George William Finch, 57, Lincoln's Inn Fields.
Walker, James	Thomas Baker Bass, Dover; assigned to Edward Knocker, Dover; and assigned to Joseph Noakes Mourilyan, 2, Verulam Buildings, Gray's Inn.
Watson, Richard Thomas Rundle	George Ogle, 4, Great Winchester Street.
Wilkinson, Robert Thomas	Robert Aiskell Davison, Bishop Wearmouth.
Williams, William John	Frederick Cooper, Brighton.
Winckworth, Lawrence Henry	Henry Atkinson Wildes, Maidstone.
Woods, Arthur William	Henry Woods, Godalming, Surrey; assigned to William Drummond, Croydon.
Wybergh, John	Richard Rushton Preston, Liverpool.
Wright, Newenham Charles	Alexander Milburn, Lincoln's Inn Fields; assigned to James Boxer, 61, Moorgate Street.

SUPERIOR COURTS.

Lord Chancellor's Court.

WILL.—GIFT OF RESIDUE.—NEAREST OF KIN OF TESTATOR'S FAMILY.

*A testator gave the residue of his personal estate to trustees to pay an annuity to his wife for life, and the surplus of the annual proceeds thereof to his daughter for life, the whole residue to be equally divided among her children, or given to one child, if she should have only one (subject to the wife's annuity); and in case the daughter should have no child, then a power to her to give away by will 3000*l.*, the residue, after her death, to go to the nearest of kin of his own family: Held, that the testator's next of kin, at the death of his daughter, he being also her next of kin at the same time, was entitled to the residue, to the exclusion of her legal personal representative.*

William Johnson, by his will, gave the funds and securities forming the residue of his personal estate, to trustees, upon trust to pay, out of the dividends thereof, to his wife, an annuity of 150*l.* during her life or widowhood, and to pay the surplus of the dividends to his daughter during her life; but in case of the death or marriage of his wife, then he directed the whole of the dividends to be paid to his daughter for her life, for her separate use; and from and after her decease, then upon trust that his trustees should assign and transfer the trust funds (subject to the said annuity for his wife) unto all and every the child and children of his daughter, to be equally divided

between them if more than one, and if there should be but one child, then the whole to go to such child. The will then proceeded to this effect: "provided that in case my said daughter shall happen to die without leaving any issue, then I will and direct that my trustees, or the survivors or survivor of them, &c., shall raise and pay the sum of 3000*l.* to such person or persons as she shall by her will appoint; and in case my said wife shall happen to survive my daughter, and my daughter shall die without issue, then I will and direct that my trustees shall, upon the decease of my daughter, and such failure of issue as aforesaid, raise and pay, out of the said trust monies, the further sum of 2000*l.* unto my said wife, to and for her own absolute use and benefit; and I will and direct that my trustees, or the survivors or survivor of them, &c., do and shall assign and transfer the residue of such trust monies and of my personal estate, unto the nearest of kin of my own family for ever." The testator died, leaving his wife and daughter surviving. His widow died in the lifetime of the daughter, without having married again, and the daughter, having intermarried with Mr. Percival White, also died without issue, and appointed by her will the 3,000*l.* which she had power to dispose of, to her husband. This bill was filed by the trustees of the will against John Martin Bulmer, who claimed to be the testator's nearest of kin, and Percival White, praying for a declaration of the Court as to the residue of the testator's personal estate. A decree was made in the cause in December, 1838, for a reference to the master to inquire for and ascertain the next of kin of the testator. The master made his report, dated the 22d of November last, whereby he

certified, that in pursuance of the said decree he had caused the usual advertisements to be inserted in the public papers, &c.; and he found that the said defendant, John Martin Bulmer, was the only next of kin of the said testator, and of the testator's daughter, Mrs. White, at her death. The report was confirmed, and the cause coming on to be heard before the Vice Chancellor on further directions, the question raised was, whether the testator intended that his residuary estate should vest in his next of kin at the death of his daughter without issue in exclusion of the daughter, or to his next of kin who should be living at his own death, including his daughter's, in which case her husband, Mr. White, who was her legal personal representative, would be entitled to the same. The Vice Chancellor held that the nearest of kin of the testator at his daughter's death was the person intended by him to take the residue of his estate, and his Honor decreed accordingly in favour of Mr. Bulmer. Mr. White, the other defendant, appealed from that decree.

Mr. Wigram, Mr. Piggott, and Mr. Humphreys, for the appellant, submitted, that the words "nearest of kin of the testator's family," referred to the period of his death; and as his daughter was then his nearest of kin, her husband and personal representative was alone entitled to the residue. The Vice Chancellor gave an importance and effect to the word "own" which did not belong to it, but which, if sanctioned, would introduce a new class of cases on a subject already overburthened with nice distinctions.

Mr. Jacob, Mr. Richards, and Mr. Keene, supported the Vice Chancellor's construction of the words, as being the most natural and reasonable intention of the testator, who appeared anxious to keep the bulk of his property in his own family, to which Mr. White was a stranger in blood. That construction was further supported by the power given to the daughter; a power if she had no children to give away 3000*l.* by her will. What could be the object in giving her that power of appointment if she was in the same event to take the whole residue? Among the cases cited on both sides were *Long v. Blackhall*,^a *Jones v. Colbeck*,^b and *Elmsley v. Young*.^c

The Lord Chancellor, in giving his judgment on a subsequent day, said, that although he had from the beginning of the argument entertained but little doubt as to what his decision ought to be, still he thought it right to look into the authorities that were referred to. His Lordship, after commenting on the words of the gift, said, the conclusion to which he came was, as he had anticipated, that there was no reason for impeaching the Vice Chancellor's decision. It was clearly the testator's intention not to give the residue to his daughter, but in the events which happened to give it to such person or persons as should be his own

next of kin at her death, which description the master, by his report, found to apply to Mr. Bulmer; and he was also the next of kin of the daughter at her death, so that he clearly answered the description, nearest of kin of the testator's family.

Clapton v. Bulmer, at Westminster, April 28th and 29th, and May 2d, 1840.

Queen's Bench.

[Before the Four Judges.]

CONSTABLE.—MARKET.—NOTICE OF ACTION.

The defendant, who was superintendent of police in the borough of Cambridge, and a constable of the borough appointed by the Watch Committee under the 5 & 6 W. 4, c. 76, s. 76, seized and destroyed meat belonging to the plaintiff in the market at Cambridge, as being unfit for human food: Held, that this was not an act done "in execution of that statute," and that consequently he was not entitled to notice of action under sec. 133.

This was an action of trespass, for seizing and destroying certain meat of the plaintiffs. The defendant pleaded, first, not guilty by statute. Secondly, that the plaintiffs had brought into the market at Cambridge a quantity of unwholesome meat; that there was a custom in the town of Cambridge for the clerk of the market to seize any meat found in the market, which should be and be found and declared by him to be unwholesome, and to destroy it; that the defendant was the clerk of the market, and that he, in discharge of his duty as such clerk of the market, did seize and destroy the meat. At the trial of the cause at the last assizes at Cambridge, before Mr. Baron Alderson, the jury found that the custom pleaded did exist, but that the meat was not unwholesome, and therefore found a verdict for the plaintiffs with 4*l.* as damages.

Mr. Biggs Andrews now moved accordingly. It appeared that the defendant, in addition to his character of clerk of the market, was superintendent of police in Cambridge, and a constable for the borough appointed by the watch committee, under the provisions of the 5 & 6 W. 4, c. 76, s. 76. It was in respect of his duties under these appointments that he justified the alleged trespass; and it was contended on his behalf that in this character he was entitled to notice of action under the 133d sec. of the above statute, which provides "that for any thing done in pursuance of this act notice of action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action." On this objection a nonsuit was applied for, but the learned Judge refused to nonsuit, but reserved liberty to the defendant to move to enter a nonsuit should the Court be of opinion that the month's notice of action ought to be given in this case. The jury found that the custom pleaded did exist, but that the meat was not unwholesome, and therefore gave a verdict for the plaintiff with 4*l.* as damages.

^a 3 Ves. jun. 486.

^b 8 Ves. 39.

^c 2 Myl. & K. 82, and on appeal, 780; S. C. 7 Leg. Obs. 139; and 10 Leg. Obs. 203.

Mr. *Biggs Andrews* now moved, according to the leave reserved, why the verdict given for the plaintiff should not be set aside, and a nonsuit or a verdict for the defendant should not be entered on the issue raised by the first plea. The defendant had been duly appointed a policeman and constable under the 76th sect. of the Municipal Corporation Act. As he held the office of constable, and had acted *bond fide* in discharge of his duties as such, he was entitled to the benefit of the 133d section of the statute. The defendant, it is clear, was entitled to the notice. He was regularly appointed constable of the borough, and whatever he did was done in the performance of the duties of constable, according to the powers vested in him as constable. [Mr. Justice *Littledale*.—Has the constable, as such, any thing to do with this matter?] That depends on another question, namely, whether the plaintiffs were not guilty of an offence by bringing into the public market meat that was unfit for sale. They were guilty of an offence under the 51 Edw. 3. [Lord *Denman*, C. J.—But are not the duties of the borough constable distinctly defined in the 76th section of the Municipal Act. Nothing is said there of an offence of this kind.] The words there are general “that the watch committee shall appoint men who shall be sworn in to act as constables for preserving the peace by day and night, and shall have all such powers and privileges, and be liable to all such duties and responsibilities as any constable now has or hereafter may have by virtue of the common law of this realm, or of any statutes made or to be made.” The bringing bad meat into the market was an offence at common law as well as by statute. But it is not necessary for the defendant to shew that he is exactly within the terms of the authority given by the statute, though his seizing bad meat was clearly so; for if, holding the office of constable, he *bond fide* acts in discharge of the duties which he believes to be cast upon him, he must be protected. The object of the act is that if he should, in the honest and *bond fide* discharge of his duties, happen to exceed the line of his powers, he shall have the opportunity of tendering amends. [Mr. Justice *Patteson*.—Your argument would go to this length, that as powers are given to him as constable, every act done by him because of his being appointed constable under the act is to be taken to be an act done by him in pursuance of this act.] What he *bond fide* does as a constable must be taken to be done in execution of the duties cast upon him by the act under which he is appointed. Every act done by him as constable is done in pursuance of the act under which he is appointed. [Lord *Denman*, C. J.—Then the effect of that would be that the borough constable would get a protection which is not enjoyed by the county constable.] That may be according to the words of the act. The borough constable has other duties, and may have other protections.

Per Curiam.—According to this argument everything done by a man in the situation of a constable must be taken to have been done

by him in pursuance of the act. The words do not go so far. They do not protect him for every thing done by him in the character of constable, but for what is done in execution or in pursuance of the act.

Rule refused.—*Clark and Parish v. Titterton*, E. T. 1840. Q. B. F. J.

PUBLIC POLICY.—POLICEMAN.

A policeman, may by discovering evidence to enable a prosecutor to prosecute a felon to conviction, entitle himself to the reward which the prosecutor has offered to any one who will put him in possession of such evidence. It is not against public policy that the policeman should do so.

Assumpsit on a promise to pay to the plaintiff a certain reward for the discovery and communication of information that would enable the defendant to prosecute with effect persons who had committed a felony. The defendant pleaded that the defendant was a constable and police officer, within the district where the offence took place, and as such, was bound to give information, &c. Demurrer and joinder.

The Court called on

Mr. *Martin* to support the plea.—The plea may be supported on the ground that the granting of the reward now claimed is against the policy of the law. The defendant here put forth a general advertisement, which cannot be stated higher than as a promise to all persons living within a certain district to give this reward on their discovery of the evidence to convict. Such an advertisement would clearly not have included the plaintiff, whose duty it was as a police officer to give the information required. There is therefore no consideration moving from the plaintiff for this promise; for he has only done that which it was his duty to do without this promise, and it is against the policy of the law to permit a public officer to receive a private reward for doing what it is his duty to do. In *Comyns' Digest*,^a the duty of a constable is defined, and in *Harris v. Watson*,^b and *Stett v. Mayrick*,^c the principle that special rewards are not to be given to persons for the ordinary discharge of their duty, is broadly laid down. And in *Newman v. Walters*,^d where a passenger took on himself more than the duties of a passenger, and so was held entitled to claim salvage, that principle was most distinctly recognized. In all the cases which are those of rewards promised to sailors, the refusal to allow the extra reward, is not put on the ground of extortion at the moment of danger by sailors, but on the higher ground that they are bound under all circumstances to use their utmost possible exertions to save the ship, and bring it to a speedy and prosperous termination of its voyage. [Mr. Justice *Coleridge*.—But all these are cases where there is a contract between the

^a Tit. Leet. M. 10, and Justices of the Peace B. 79.

^b Peake's Ni. Pri. 72.

^c Id. 307.

owners and the sailors; but here is a case where the plaintiff requires a peculiar advantage, beyond that which it is the duty of the policeman to afford him.] It is submitted that this is not beyond the line of the duty of the policeman, who is bound at all times to do all in his power to discover a crime, and bring the criminals to punishment. All the cases are collected in *Barber v. Fox*.^d

Mr. Ingham, contra.—The cases of sailors are not applicable to those of constables. The sailor is bound to give the whole of his service to his master. He was stopped.

Lord Denman, C. J.—We are of opinion that there may be good services rendered by a man beyond those which he is bound to render as a policeman, and unless we can clearly see that an express agreement is contrary to public policy, we shall not stop a plaintiff from recovering upon it.

Judgment for the plaintiff.—*England v. Davison*, E. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

SIGNING PLEA.—COUNSEL'S SIGNATURE.—ORIGINAL AND COPY.

It is not necessary to sign with an original signature the plea delivered, as it is sufficient that the draft is signed.

In this case the defendant pleaded a plea requiring counsel's signature, and delivered the plea ingrossed and signed with a copy of the counsel's signature, and not an original signature of the counsel. On this ground the plaintiff signed judgment. A rule was obtained by

Corrie, to set aside this judgment, on the ground of the original signature having been attached to the draft plea, although only a copy had been attached to the plea delivered.

Whitehurst shewed cause against the rule, and admitting that the practice had hitherto been in conformity with the course pursued by the defendant, the judges at chambers had determined that the plea delivered must be signed with the original signature of the counsel.

Corrie, in support of the rule, contended that the consequences of such a rule of practice would be more inconvenient, if not impossible to adopt.

Coleridge, J., took time to consider on the question.

Cur. adv. vult.

Coleridge, J.—I have spoken to the Judges of this and the other Courts; and we are of opinion that the signature of the draft by the counsel is sufficient, without signing the plea actually delivered. The present rule must therefore be made absolute.

Rule absolute.—*Salter v. Ponsford*, E. T. 1840. Q. B. P. C.

NONSUIT.—NEW TRIAL.—SHERIFF'S NOTES.—LEAVE RESERVED.

Where the Secondary has not reserved leave to enter a nonsuit, as appears by the notes sent by him to the Court, an application for that purpose will not be entertained.

Leahy had obtained a rule calling on the plaintiff to shew cause why the verdict in this case should not be set aside, a nonsuit entered, or a new trial granted. It was an action brought by the proprietor of the Victoria Theatre against the defendant, for the use and occupation of certain places in the Theatre on the 15th of January last. The case came on for trial before the Secondary, and the jury found for the plaintiff, with nine guineas damages.

James shewed cause.

Leahy, contra.

Williams, J.—There was enough to satisfy the Court the verdict was wrong, and it was unnecessary to enter into the question of illegality.

Leahy then contended that the rule had been originally granted for a nonsuit, and that should form part of the rule.

Williams, J.—I will not travel out of the Secondary's notes, and he has not returned on his notes that he gave permission to apply for a nonsuit. The rule will only be absolute for a new trial.

Rule accordingly.—*Deverley v. Walter*, E. T. 1840. Q. B. P. C.

MANDAMUS.—RAILWAY BRIDGE.—INJURY.

Where a bridge has been built by a railway company across a road, and a descent formed, which are not in strict conformity with the provisions of the act of parliament, but which was not productive of much inconvenience, the court will not grant a mandamus to pull down the bridge and build another.

In this case an application was made by *Peacock*, on behalf of Mr. Kavanagh, calling on the defendants to shew cause why a mandamus should not be issued, in order to compel them to construct a bridge, in pursuance of 6 & 7 Wm. 4, c. 106, s. 100, which provides, "And where any bridge shall be erected by the said company for the purpose of carrying the said railway over or across any private carriage road or occupation-way, the space of the arch of such last-mentioned bridge shall be formed, and shall at all times be, and be continued, of such width as to have a clear and open space under every such arch of not less than fifteen feet, and of a height from the surface of such private carriage-road or occupation-way, to the centre of such arch not less than sixteen feet, and the descent under such last-mentioned bridge shall not exceed one in thirteen feet." It appeared from the affidavits in support of the motion, that Mr. K. lived at Brentwood Hall, and that there was a private way from

^d 3 Bos. & Pul. 612. * 2 Wms. Saund. 837, et. n.

his house to the high road. Over a certain part of this way a bridge had been erected; but it was not of the height prescribed by the act by eighteen inches, and the inclination of the road was one foot in twelve only, whereby the water accumulated to the depth of six inches.

Williams, J.—Do you mean then that the company should be directed to pull down this bridge and erect another?

Peacock.—The bridge is not erected in conformity with the act. The company might be directed to pull down this and erect another. Iron girders, however, would remedy the inconvenience.

Williams, J.—The inconvenience here does not appear of that nature to induce me to let a *mandamus* go. If I were to grant this application, it might be contended, that if the company were wrong by an inch, they might be compelled to pull down the bridge and erect another.

Rule refused.—*Reg. v. The Eastern Counties Railway Company, E. T. 1840. Q. B. P. C.*

Common Pleas.

EXECUTION OF WARRANT OF ATTORNEY.

The attorneys of the plaintiffs employed a partnership firm in the country to serve a copy of the writ of summons in the action upon the defendant. The defendant applied to them to procure time to pay the debt. They entered an appearance and delivered a plea in his behalf, but made his application to the plaintiffs. The defendant swore that he gave no authority to the attorneys to act as his attorneys in the cause. Quære, whether a warrant of attorney executed by him, in the presence only of one of them, is valid

Manning, Serjt., moved for a rule calling upon the plaintiffs to shew cause why the judgment entered up in this action should not be set aside, together with all subsequent proceedings, upon the ground of the irregularity of the execution of the warrant of attorney under which the judgment had been taken. The plaintiffs, it appeared, were booksellers in London, and had had dealings with the defendant, who lived at Wigan. In the course of these dealings the defendant became indebted to the plaintiffs, who commenced an action for the recovery of the amount due. A writ of summons was sued out by Messrs. Freeman and Bothomley, the plaintiffs' attorneys, and they sent it down to Messrs. Morris and Slater, attorneys at Wigan, to be served. The defendant, on receiving notice of the writ, repaired to Messrs. Morris and Slater, and requested them to endeavour to procure time for him to pay the sums due. In answer to their application Messrs. Freeman and Bothomley proposed that the defendant should give a warrant of attorney, confessing judgment in the action, and also in respect of certain other sums due. Messrs. Morris and Slater had in the meanwhile entered an appearance for the

defendant and delivered a plea, but, as the defendant swore, without any further authority from him than that given by his calling upon them to procure time, and to make arrangements in his behalf. The defendant being sent for to Messrs. Morris and Slater's office, at once consented to the terms proposed by the plaintiffs, and then in the presence of Mr. Slater, no one else being in the office, he executed the required warrant. The terms of the warrant not being complied with, execution subsequently issued and the goods of the defendant were taken. In two days afterwards however, a *fiat* in bankruptcy issued, and assignees having been chosen, the present motion was made in their behalf. It was contended that the warrant was not properly executed within the terms of the 9th section of 1 & 2 Vict. c. 110, no attorney specially named by the defendant being present.

Tindal, C. J.—You should negative the supposition that the defendant was aware that Messrs. Morris and Slater were acting in his behalf. They were his own attorneys.

Bosanquet, J.—A plea had been put in by the attorneys for the defendant, and Mr. Slater was therefore his attorney, unless the defendants' knowledge of his having acted for him is denied.

Manning, Serjt.—The defendant denied that he gave Messrs. Morris and Slater any authority to act for him. He cited *Mason v. Kiddle*, 5 M. & W. 513, and a case of *Dolphin v. Rising*, which occurred in the Court of Queen's Bench in H. T. 1840, and was not yet reported. The circumstance of Messrs. Morris and Slater being employed by the plaintiffs attorneys to procure the execution of the warrant, for it was sent down to them for that purpose, was sufficient to disqualify either of them from acting.

Erskine, J.—The warrant may have been sent down, the plaintiffs' attorney believing that they could trust them to procure its execution.

Manning, Serjt.—That would constitute them attorneys for both parties, which was clearly intended to be prevented by the statute.

The court eventually granted a rule *nisi*.—*Whitaker and another v. Griffiths, E. T., 1840. C. P.*

Exchequer.

NOTICE OF TRIAL.—COUNTERMAND OF NOTICE.—ATTORNEY AND CLIENT.

Notice of the countermand of trial must be served on the defendant's attorney, and not on himself, although the former has no agent in the country.

Watson shewed cause against a rule which had been obtained, calling on the plaintiff to shew cause why he should not pay the costs of the day, for not proceeding to trial pursuant to notice. Notice of trial had been served on defendant's attorney, for the assizes at Norwich on the 31st March. On the 25th March, notice of countermand was served on the de-

fendant, an unprofessional person, who lived at Norwich; but the case had been conducted throughout by his attorney in London, who had no agent in the country. On receipt of the countermand, the defendant immediately wrote to his attorney, announcing the fact; and the question which now arose was, whether this countermand was given in sufficient time? He referred to *Jervis's New Rules* (ed. 4) where it is stated, "In country causes, a countermand may be given either in town or country, unless otherwise ordered by the court."

Lord Abinger, C. B.—That means, that notice may be delivered either to the agent in town, or the attorney in the country. Reason points out, that where a party to a suit employs an attorney, it is on him that all such notices should be served, and not on the client, who, being merely a layman, can know nothing of their effect. Were this to be allowed, notice of countermand would be served on the parties to a suit a few hours only before the expiration of the limited period, and which consequently, if the client lived at any distance from his attorney, would not be received by the latter in the proper time allowed him by law to recall his preparations.

Rule absolute.—*Margetson v. Rush*, E. T. 1840. Excheq.

RULE APPOINTING COMMON LAW EXAMINERS.

Easter Term, 1840.

IT IS ORDERED that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, together with John Teesdale, Thomas Metcalfe, Thomas Adlington, Robert Riddell Bayley, William Loxham Farrer, George Frere, James Wm. Freshfield, Bryan Holme, William Lowe, Edward Rowland Pickering, William Tooke, and Richard White, gentlemen, attorneys, be, and the same are hereby appointed Examiners for one year next ensuing, to examine all such persons as shall desire to be admitted attorneys of all or either of the said Courts, and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of, and subject to, the provisions of all the Courts made in this behalf in Hilary Term, 1836.

Approved by the Judges of the Queen's Bench, 15th April, 1840.

A. D. CROFT.

Approved by the Judges of the Common Pleas, 16th April, 1840.

H. B. RAY.

Approved by the Judges of the Exchequer of Pleas, 16th April, 1840.

STEPHEN RICHARDS.

COMMON LAW SITTINGS.

For the Queen's Bench *Easter Term* Sittings see p. 27, ante.

Common Pleas.

Sittings after Easter Term, 1840.

MIDDLESEX.

Thursday .. May 14	} Common Juries.
Friday .. 15	
Saturday .. 16	

LONDON.

Monday .. May 18	} Common Juries.
(Adjournm ^t Day)	
Tuesday .. 19	
Wednesday .. 20	

Exchequer of Pleas.

Sittings at Nisi Prius after Easter Term, 1840.

MIDDLESEX.

Thursday . May 14	Common Juries.
Friday .. 15	Revenue & Com. Juries.
Saturday .. 16	} Common Juries.
Monday .. 18	

LONDON.

Tuesday .. May 19	} Common Juries.
(Adjournm ^t Day)	
Wednesday .. 20	

The Court will sit at half-past nine o'clock.

Queen's Bench.

Sittings in and after Trinity Term, 1840.
In Term.

MIDDLESEX.

LONDON.

Thursday May 28	} Tuesday June 16
Monday June 1	
Monday June 15	

After Term.

Thursday June 18	Friday June 19
(to adjourn only)	

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 28th of May and the 1st June, to June 18th; and all other Causes on the Lists for the 28th May and 1st of June, will be taken from day to day until they are tried.

Undefended Causes only will be taken on June 15th.

Short defended as well as undefended Causes entered for the Sitting on June 16th will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Common Pleas.

Sittings in and after Trinity Term, 1840.
In Term.

MIDDLESEX.

LONDON.

Wednesday .. June 3	Friday June 5
Wednesday 10	Friday 12

After Term.

MIDDLESEX.

LONDON.

Thursday June 18	Friday June 19
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The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The Causes in the List for each of the above Sitting Days in Term, if not disposed of on

those days, will be tried by Adjournment on the days following each of such Sitting Days.

On Friday the 19th of June, in London, no Causes will be tried, but the Court will adjourn to a future day.

Exchequer of Pleas.

Sittings at Nisi Prius in and after Trinity Term, 1840.

In Term.

MIDDLESEX.

First Sitting Friday May 29

By Adjournment.. { Saturday 30

Monday June 1

Second Sitting.... Wednesday 10

By Adjournment.. { Thursday 11

Friday 12

LONDON.

First Sitting Wednesday June 3

Second Sitting Monday 15

By Adjournment... Tuesday 16

After Term.

MIDDLESEX.

LONDON.

Thursday June 18 | Friday June 19

The Court will sit, during Term, at ten o'clock.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.

[In Select Committee.]

For facilitating the Administration of Justice.

[In Committee.]

Lord Chancellor.

For the commutation of Manorial Rights.

[For second reading.]

Lord Redesdale.

Vagrants' Removal.

[For third reading.]

To amend the Tithes Commutation Act.

[In Committee.]

Frivolous Suits Act amendment, touching costs.

[Passed.]

Lord Denman.

Rated Inhabitants Evidence.

[Passed.]

To augment the Maintenance of the poor

Clergy.

[For second reading.]

House of Commons.

To amend the Law of Copyright.

[In Committee.]

Mr. Serjt. Talfourd.

To improve the High Court of Admiralty.

[In Committee.]

To extend the Term of Copyright in Designs

of woven Fabrics.

Mr. E. Tennant.

[In Committee.]

To carry into effect the Recommendation of

the Ecclesiastical Commissioners.

[In Committee.]

Lord J. Russell.

To extend Freeman and Burgesses' Right of

Election.

Mr. F. Kelly.

Drainage of Lands.

Mr. Handley.

[In Committee.]

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and

to allow Unions.

Mr. Mackinnon,

Prisons Act Amendment.

[Passed.]

To consolidate and amend the Law of Sewers.

[In Committee.]

Small Debt Courts for

Alston,

Tavistock,

Liverpool,

Wakefield Manor.

Marylebone,

Summary Conviction of Juvenile Offenders.

[In Committee.]

Sir E. Wilmot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage.

Mr. W. Miles.

Metropolitan Police Courts.

[For second reading.]

To abolish capital punishment in all cases except Murder.

Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[In Select Committee.]

RESULT OF EASTER TERM EXAMINATION.

THE number of candidates examined the last term was much reduced in comparison with the printed list of admissions. Only 108 attended the examination, and all were passed except three, whose answers were not deemed satisfactory. It appears that there were not many who came up to the highest degree of excellence, but on the whole the examination was considered a very good one. We have in another part of this number stated the names of the successful candidates.

The Examiners were Sir Archer Denman Croft, Bart., Mr. Amory, Mr. Clayton, Mr. Harrison, and Mr. Metcalfe.

THE EDITOR'S LETTER BOX.

The case reported at p. 15, under the title of *Williams v. Hillary*, we are informed, should be *Davy and another v. Hillary*, and that the evidence for the plaintiffs did not prove that the promissory note therein mentioned was given up to the defendant, but to his attorney, the action upon that note (it ought to have been called a bill of exchange) was not defended, but settled as soon as defendant had been held to bail. There could not, from the circumstances, have been any valid defence to that action.

We think that only one affidavit is necessary in the case mentioned by F. B. H. The other affidavits are made when the clerk comes up for admission: but we will insert our correspondent's letter as early as convenient.

The report of the case of prohibition shall be inquired for.

The Legal Observer.

SATURDAY, MAY 23, 1840.

—“Quod magis ad nos
Pertinet, et necire malum est, agitamus.

HORAT.

THE LAW RELATING TO RAILWAYS.

THE great importance of the subject of railways—the new points constantly arising respecting them, and their increasing bearing on the law relating to property, have induced us from time to time to devote much of our space to their consideration; and we shall now call the attention of our readers to the Third Report of the Select Committee appointed to inquire into the state of communication by railways, as their resolutions are of much interest to all persons, either dealing with these companies, or advising others in their dealings with them.

The investigation of the subject, in the opinion of the Committee, demonstrates beyond all doubt that Parliament was anxious to prevent railway companies from obtaining an exclusive control over the conveyance of passengers and goods along their respective lines; and by a reference to railway acts, it will be seen that provisions have been carefully inserted in all of them for the purpose of protecting the public against the establishment of a monopoly. But there was one great error committed in the powers conceded to these companies. “The general impression of Parliament appears to have been, that there existed a close analogy between the principles which govern the means of conveyance by railway and by canal; and this indeed appears to have been the opinion of the railway proprietors themselves. The legislature, in its anxiety to prevent a monopoly, which was not sought even by the promoters of the Bills, enacted that any person might place and run his own engines, carriages and waggons on a railway, subject to the payment of certain tolls; but under such regulations as might

be made by the company. With the same view, it was provided that the owners and occupiers of adjoining lands should have free access to the railway, and might make branch lines to join the company's line, in which case the company should be bound to make an opening for the branch line, charging the cost of this work to the parties requiring the accommodation. Rights were also given to lords of manors, and other owners of contiguous land, to erect wharfs; and they were further empowered to use the railway, as far as their own land extended, without being liable to any payment of toll. Parliament, in pursuance of the same erroneous view, considered that it had sufficiently provided for the interests of the public, when it had limited the amount of tolls, &c;” but it appears clear that these enactments proceeded entirely on a false and dangerous view of the subject, and further experience has taught railway directors that they could not, with due regard to the efficiency of their railways, and to the convenience and safety of the public, allow rival parties to place and run engines and carriages on the same line, and it was eventually acknowledged that these lines of communication must be placed under one undivided control and authority; and that any departure from this principle would be attended with the greatest injury to their property, and inconvenience to the public, if not with more calamitous results. The committee, therefore, have confirmed the resolution come to by the committee of last session. “That it is indispensable, both for the safety and convenience of passengers and the public, to prohibit, as far as locomotive power is concerned, the rivalry of competing parties on the same line of railway, although such prohibition involves the continuance of the monopoly.” But

while they recommend that an exclusive authority and management over their own line should be vested in railway companies, they also advise that some system of superintendence should be adopted with respect to them, and that this control would be most advantageously entrusted to some department of the executive government; that this department should have authority to send an engineer or other person to visit and examine the works of any railway, and that no new railway or portion of railway should be opened for the conveyance of passengers until after a month's notice at the least had been given to this department; that this department should see that the several provisions contained in all acts of parliament having reference to railways, are duly observed, and should institute legal proceedings at the public expense, in cases where such provisions have not been complied with; that all bye-laws of railway directors should be submitted to this department, which shall have power to call for all necessary returns.

As these resolutions were carried with only one dissenting voice in the committee, (Mr. Easthope) we think it is highly probable that they will pass into law; at any rate all future railway bills must be framed with reference to them.^a Lord Seymour (the Chairman of the Committee) has just given notice of a Bill in pursuance of them.

THE LORD CHANCELLOR'S BILL.

We are glad to hear that the profession is bestirring itself in favour of the Lord Chancellor's Bill for Chancery Reform, and that it is almost universally approved. The first petition in its favour, which the Lord Chancellor presented, went only to the appointment of two Equity Judges; but we understand that petitions are now in forwardness, very numerous, signed, in favour also of the abolition of the Equity Exchequer. Under these circumstances, we sincerely trust that the Bill may pass into a law in the course of the present Session, and have only to regret that any delay should take place in its progress. We had hoped that the Committee on the Bill would have been taken in the present week. It stands, however, for the 1st of June; and as there are symptoms of an early breaking up of the present Session of Parliament, we have great fears respecting it. If, however, it pass

the House of Lords within a month, it is still possible that it may become law. When we consider the misery and distress that many thousands will endure for another year, at least, if it does not pass, we can only pray that both Houses of Parliament, instead of spending their time in mere party squabbles, may apply themselves to carrying through a measure so indispensable.

WORDS CREATING A TRUST IN A WILL.

In *Lechmere v. Lawie*, 2 Myl. & K. 197, the rule of construction was held to be, that words of expectation in a will, not amounting to a recommendation, will not create a trust; and we may here review the cases on this point, as it is not of uncommon occurrence.

Where a testator, after giving his real and personal estates to his wife in fee, said that he had so given the same to her, unfettered and unlimited, *in full confidence* that in her future disposition thereof she would distinguish the heirs of his late father by devising the whole of his estate, together and entire, to such of his father's heirs as she might think best deserved her preference. It was held, first, by the Court of Exchequer, and next by the House of Lords on appeal, that no trust was created.^a In *Sale v. Moore*,^b a testator having given an annuity to one of his next of kin, and expressed a reason for giving nothing to the others, gave the residue of his property to his wife, recommending to her, *and not doubting that she would consider his near relations*, as he would have done if he had survived her: it was held that there was no trust for the next of kin, but that the wife took the residue absolutely. The same rule was held to apply where a testator gave annuities out of any money arising from whatever dividends he might die possessed of in the Bank of England, and the residue of the said dividends to his brother A., *to enable him to assist such of the children of his brother F. as he should find deserving of encouragement*, and upon the demise of the annuitants, or any of them, the testator gave each annuitant's proportion of the before mentioned dividends to his brother A., to be at his disposal, but the principal to remain in the Bank. A. took the whole absolutely, subject to the annuities,

^a See the Law as to the Rights of the Crown over Railways, 16 L. O. 211.

^a *Meredith v. Heneage*, 1 Sim. 542.

^b 1 Sim. 534.

and no trust was created for the children of F. Nor will the construction be different where the bequest is to the testator's wife, trusting that, should she marry again, and have other children, her affection for their daughter would induce her to make the daughter her principal heir." So also, where there was a bequest of all a testator's personal estate to C., whom she appointed one of her executors, for his own use and benefit for ever, *trusting and wholly confiding in his honour*, that he would act in strict conformity with her wishes, it was held that no trust was created by these words.^d The last case on this subject is that of *Bardswell v. Bardswell*,^e in which a testator bequeathed all his property, both real and personal, to his son Charles, his heirs, executors, &c. to and for his and their own use and benefit, well knowing he would discharge the trust the testator reposed in him by remembering his (the testator's) sons and daughters; and Sir L. Shadwell, V. C., held that no trust was created for the sons and daughters, but that Charles took the property for his own benefit absolutely. "The words on which the question arises," said his Honour, "are: I give, devise, and bequeath all my estate and effects, both real and personal, of what nature or kind soever, and wheresoever the same may be, unto my son, Charles Bardswell, his heirs, executors, administrators and assigns, to and for his and their own use and benefit, well knowing he will discharge the trust I have reposed in him, by remembering my sons and daughters." It is clear, from the first part of the sentence, that the whole of the property is given to the son absolutely for his own use and benefit. The words of gift point to heirs, executors, &c.; but the words by which the trust is said to be created, relate solely to the son; so that it is a gift to the son, his heirs, executors, administrators or assigns, without imposing any trust on the heirs, executors, administrators, or assigns. Now a case might easily be put in which the trust could be performed only by the heirs, executors, administrators, or assigns; as for instance, if the son had died the day after his father; but there is a plain expressed intention to give the property to the son for his own use and benefit, well knowing, &c. &c.: so that the testator has left it to the son to execute the trust of remembrance in what manner he thinks proper. If we take the words in their common and

ordinary sense, the testator has given the property to his son absolutely, and has given a recommendation merely of his other children to the kindness of his son. There is no doubt that the expression, 'well knowing,' would have created a trust if it were pointed out who were the parties to take, and what they were to take. The objection that no trust is declared, does not apply: as the testator has himself declared what the trust is. The demurrer must, therefore, be allowed.

THE PROPERTY LAWYER.

AUCTIONEER.

THE auctioneer and his clerk may be considered as the constituted agents of the vendor; he appoints the former to announce the biddings, and the latter to take down the names of the purchasers, and the prices of the lots. And it has been repeatedly decided, both at law and equity, that an auctioneer is the agent of both parties upon a sale of goods, so as to be enabled to bind them both under the Statute of Frauds. *Emmerson v. Heelis*, 2 Taunt. 38; *White v. Proctor*, 4 Taunt. 209; *Kemys v. Proctor*, 3 Ves. & B. 57; 1 Jac. & W. 350. The rule, therefore, may be laid down generally, that an auctioneer is not only the lawful agent of the vendor, but of the purchaser (1 Sugd. V. & P. 189, 10th edit.) But he is not agent for all purposes; he is only an agent to a limited extent. This is shewn by a very recent case. The plaintiff having employed an auctioneer to sell certain timber growing on his estate, the following, amongst other conditions, were read at the sale, in the presence of the defendant. "That each purchaser should pay down a deposit of 10*l.* per cent. in part of the purchase money, and pay the remainder on or before the 17th August; but in case any purchaser should prefer to pay the whole amount of his purchase money at an earlier period, discount after the rate of 5*l.* per cent. will be allowed." Also, "That each purchaser shall enter into a proper agreement and bond, if required, with such one, two, or more sureties as shall be approved by the vendor or his agent, for the performance of his agreement pursuant to the above conditions." The defendant became the purchaser of one lot, and paid his deposit. Some days after the sale, which was on the 14th of February, the defendant, at the auctioneer's request, drew a bill of

^c *Hoy v. Master*, 6 Sim. 568.

^d *Wood v. Cox*, 2 Myl. & C. 684.

^e 9 Sim. 319.

exchange for the residue of the purchase money, dated on the day of the sale, on one J. M., payable six months after date to his own order, and endorsed it to the auctioneer, who, being in difficulties, indorsed it to a third person, to whom he was indebted on his own account. The bill became due on the 17th of August, when the amount of it was duly paid to the holder. It was never transferred to the plaintiff, and it was held that the auctioneer having no authority to receive the residue of the purchase money, or to take any security for it, the delivery and payment of the bill of exchange was not a valid payment of the residue of the purchase money. Lord Abinger, C. B., said, "There is no doubt that this is a case of great hardship, the defendant acting honestly and fairly, having before paid the money. An auctioneer has authority to sell under the instructions he has received, and here those instructions appear from the conditions of sale. By the conditions in the present case, the vendee is to pay a deposit of 10l. per cent., and the remainder on or before the 17th of August, but he is not to pay it to the auctioneers. As soon as the sale has taken place, and the deposit money paid, the authority of the auctioneer is at an end, and he had no authority to make any contract for payment of the remainder. The conditions do not specify who is the agent of the vendor; but the agency of the auctioneer being at an end, he had no authority to receive the money, and most clearly not to take the bill of exchange. The cases which have been cited, when properly examined, do not impugn this view of the case." *Sykes v. Giles*, 5 Mee. & W. 645.

NOTICES OF NEW BOOKS.

A Selection of Leading Cases on various branches of the Law; with Notes. Vol. II, Part II. By John William Smith, Esq., of the Inner Temple, Barrister at Law. London: A. Maxwell.

We are glad to find that Mr. Smith's valuable Selection of Leading Cases is now completed by the concluding part of the second volume, and which comprises an Index to the important subjects it contains.

The first case in this part, that of *Nepean v. Doe*, 2 M. & W. 910, relates to adverse possession since the statute 3 & 4 W. 4, c. 27; and the next, *Taylor d. Atkins v. Horde*, 1 Burr. 60, relates to adverse possession before the 3 & 4 W. 4, c. 27.

The cases then selected relate to estoppel, namely, *Doe d. Christmas v. Oliver and another*, and *Same v. Oliver and others*, 5 M. & R. 202. These are followed by *The Duchess of Kingston's case*; *Hughes v. Cornelius*, 2 Show. 232; and *Trevivan v. Lawrence*, Sal. 276.

Under the first of these heads—that of adverse possession—we shall submit to our readers the following extract from the learned Editor's notes:

"The doctrine of adverse possession, until very lately, constituted, and perhaps still constitutes one of the least settled, although most important heads of English law. The difficulties which surrounded it seem to have had an origin subsequent to the abolition of a great proportion of the ancient tenures by st. 12 Car. 2, cap. 24. Before that event, the difference seems to have been well understood between the sort of wrongful holding which would reduce the interest of the lawful owner to a right capable of being barred by the statute of limitations, and substitute the wrongdoer for him meanwhile, as the representative of the freehold and the person responsible to the lord for feudal dues and services, and that species of unwarrantable possession which was accompanied by no such consequences. At all events, it is not till a comparatively modern period that we find any complaints about the difficulty of ascertaining what did or what did not constitute adverse possession. At last, however, this difficulty not only arose, but became so considerable, that in *Taylor d. Atkins v. Horde*, so long the leading case upon this subject, we find Lord Mansfield saying, that "the precise definition of what constituted a disseisin, which made the disseisor the tenant to the demandant's præcipe, though the right owner's entry was not taken away, was once well known, but is not now to be found. The more we read, the more we shall be confounded." The view taken by his lordship in this case is, that disseisin at the common law "signified some mode or other of turning the tenant out of his tenure, and usurping his place and feudal relation:" an act which was also accompanied by this consequence: namely, that, if the disseisor died seised, the descent to his heir gave him the right of possession, and tolled or took away the true owner's entry. Co. Litt. 238 a, Litt. 426. This being the state of things at common law, the assize of novel disseisin was invented; which being found a beneficial remedy, but being applicable only to the case of a person disseised, a fiction grew up and was encouraged by the Courts, according to which a party wrongfully out of possession, although not disseised, properly speaking, of the freehold, was permitted to treat the wrong done him as a disseisin for the sake of entitling himself to an assize. "In a word," says Lord Mansfield "for the sake of the remedy, as between the true owner and the wrong doer to punish the wrong, and as between the true owner and naked possessor to try the title, the

assize was extended to almost every case of obstruction to an owner's full enjoyment of lands, tenements, and hereditaments." This sort of supposed disseisin obtained the name of *disseisin at election*, for the purpose of distinguishing it from the other, or *actual disseisin*, the consequences of which were widely different.

For, after an *actual disseisin*, the disseisee could not devise or dispose of the lands, inasmuch as his interest was, by the disseisin, cut down to a right of entry, which the policy of the old law against maintenance would not allow him to depart with; and further, if a descent was cast after a year, he lost his right of entry, and was put to his real action in order to reinstate himself.

When st. 21 Jac. 1, cap. 16, had passed, his condition became still worse; for, by that act, it was ordered "that no person should make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title shall first descend or accrue to the same, except infants, *femes covertæ*, persons *non compos mentis*, imprisoned or beyond the seas, who shall have ten years next after his and their full age, discovery, coming of sound mind, enlargement out of prison, or coming into this realm, to make their entry or claim in." Previous to this, the claimant might have entered at any time, provided that his entry was not *tollad*. *Bevill's case*, 4 Co. 11 b. But this statute, in twenty years, barred the disseisee's entry in the same way that a descent cast barred it at the common law; and the right owner was, after that time, put to his real action, the period for commencing which had been before limited by st. 32 H. 8, c. 1, and was, in the extreme case—that, namely, of a writ of right on the demandant's ancestor's own seisin—terminated at the expiration of sixty years from the time when the right first accrued which the writ was sued forth to recover.

This statute, however, it is apprehended, only ran against the true owner in those cases in which he would, at common law, have been put out of his tenancy and reduced to his right of entry; but not to cases in which he might have elected to consider himself disseised, although not really so, for the purpose of entitling himself to maintain an assize; and, consequently, whenever the question arose whether a particular claimant was barred by having been twenty years out of possession, the mode of solving this question was by considering whether he had been out of possession under such circumstances as had reduced his interest to a right of entry; for, if he had, then, as that right of entry would be barred by st. 21 Jac. 1, at the end of twenty years, the possession during the intermediate time was *adverse* to him. Now, in order to determine whether the claimant had been out of possession under circumstances which would turn his estate to a right of entry, it was necessary to inquire in what manner the person who had been in the possession during that time held. See *Reading v. Royston*, Sal. 423. If he held in a character incompatible with the idea that the free-

hold remained vested in the claimant, then, as the case would arrange itself under some one of the heads *disseisin*, *abatement*, *discontinuance*, *deforcement*, or *intrusion*—all of which expressed at common law different modes of substituting a freeholder by wrong for one by right, so as to make the new comer tenant to the lord and to a stranger's *præcipe*, see 1 Roll. 659, &c.; Co. Litt. 277, it followed that the possession in such character was *adverse*. But it was otherwise if he held in a character compatible with the claimant's title. And, in order to ascertain in what character the person in possession held, the Court would look at his conduct while in possession. See *Doe d. Grubb v. Grubb*, 10 B. & C. 816; *Smartle v. Williams*, 1 Salk. 246; *Williams v. Thomas*, 12 East 141; *Doe v. Perkins*, 3 M. & S. 271; *Hall v. Doe d. Surtees*, 5 B. & A. 687; *Doe d. Foster v. Scott*, 4 B. & C. 706; *Doe d. Humann v. Pettet*, 5 B. & A. 223; and *R. v. Axbridge*, 2 Ad. & Ell. 520.

"It is therefore apprehended that at the time of the enactment of 3 & 4 W. 4, c. 27, the question whether possession was or was not *adverse* was to be decided by inquiry whether the circumstances of that possession were sufficient to evince its incompatibility with a freehold in the claimant. It is not intended to carry the discussion of this part of the subject much further, since the above statute has, as will be shown, rendered the doctrine of *adverse possession* of less importance, so far as claims of title founded upon twenty years' enjoyment are concerned."

From the notes on the cases relating to estoppel, we select the following:

"It is intended in this note to offer one or two remarks upon the nature of *estoppels*, a head of law once tortured into a variety of absurd refinements, but now almost reduced to consonancy with the rules of common sense and justice. The definition of *estoppel* given by Lord Coke is, to be sure, a little startling:—*An estoppel is where a man is concluded by his own act or acceptance to say the truth.*" And, certainly in our old law books, truth appears to have been frequently shut out by the intervention of an estoppel, where reason and good policy required that it should be admitted. However, notwithstanding the unpromising definition of the word *estoppel*, it is in nowise unjust or unreasonable, but, on the contrary, in the highest degree reasonable and just, that some solemn mode of declaration should be provided by law for the purpose of enabling men to bind themselves to the good faith and truth of representations on which other persons are to act. *Interest reipublicæ ut sit finis litium*. But, if matters which have been once solemnly decided were to be again drawn into controversy, if facts once solemnly affirmed were to be again denied whenever the affirmant saw his opportunity, the end would never be of litigation and confusion. It is wise, therefore, to provide certain means by which a man may be concluded, not from saying the truth, but

from saying that that, which, by the intervention of himself, has become accredited for truth, is false. And probably no code, however rude, ever existed without some such provision for the security of men acting, as all men must, upon the representations of others.

"Touching *estoppels*," says Lord Coke, "which are a curious and excellent sort of learning, it is to be observed, that there be three kinds of estoppels; viz. *by matter of record, by matter in writing, by matter in pais*." Although his lordship uses the word 'writing,' it is clear that the writing which is to operate as an estoppel must be a *deed*.—See *Stratton v. Rastall*, 2 T. R. 366; *Lampon v. Corke*, 5 B. & A. 611; *Greaves v. Key*, 3 B. & Ad. 313."

"With regard to *foreign judgments*, (and colonial judgments are included within these terms), it is even now not quite settled to what precise extent they bind in this country. "Great doubts," to use the expressions of the L. C. J. *Tindal*, "have formerly existed, and some degree of doubt still exists, whether a judgment so recovered is conclusive between the parties, or whether the matter may be opened and agitated in the country;" 5 Bing. N. C. 221. They certainly do not occasion a *merger* of the original ground of action, *Smith v. Nicholls*, 5 Bing. N. C. 208; *Hall v. Odler*, 11 East. 124. And when it becomes necessary to enforce them in this country, the plaintiff has his option either to resort to the original ground of action, or bring an *assumpsit* on the judgment recovered; *per Tindal*, L. C. J. *ibid*. It may possibly be, that, if the plaintiff should adopt the former part of this alternative and sue on the original ground of action, it would be open to the defendant to controvert that ground of action notwithstanding the production of the foreign judgment, on the same principle on which it is held that where there is an opportunity of placing the judgment of one of our own Superior Courts on the record, and it is not placed there, it will not be conclusive. *Vooght v. Winch*, 2 B. & A. 162; *Doe v. Huddart*, 2 C. M. & Rosc. 316. That it will, however, operate in such a case as at least *prima facie* evidence of the plaintiff's right seems clear both upon principle and authority. See *per Eyre*, C. J., *Phillips v. Hunter*, 2 H. Bl. 410; and see *Sinclair v. Fraser*, Dougl. 5 no., and *Hall v. Odler*, 11 East, 124.

Mr. Smith states it was intended that the work should embrace a few more subjects, but great delay would have been caused by waiting to prepare them, and the publisher thought that the work had been too long incomplete. The Notes, from which we have made the preceding extracts, are very full, and (we need scarcely add) display the well-known research, discrimination, and judgment of the learned Author. We think the whole work is entitled to be placed in the library of every practitioner and student.

OBJECTIONS TO THE BILL RELATING TO SEDUCTIONS AND BREACH OF PROMISE OF MARRIAGE.

Sir,

I HAVE read with some attention the bill giving summary power to justices of the peace in special sessions assembled in the above cases. The bill sets out with stating that the poorer classes are prevented from availing themselves of the remedies already in existence by the expence attending them. This is the evil supposed, for which a remedy is to be provided.

Has the existence of this bar to redress in these cases been proved? Have any cases been produced in which the injured parties have been unable to bring their cases before a jury, solely on account of the expences attending the proceedings? This is the stated evil: feelings of shame and dread of exposure will operate as forcibly with the proposed tribunal for redress, as in the one which is supposed so hardly to be got at. I venture to say that if the existence of the alleged evil is to be the foundation of the act, it stands upon unsteady ground:—in fact it has no support whatever.

It is not the expence of an action in its various stages, but the uncertainty of success, which in some cases operates against claims being brought forward; but in cases cared for by the bill, there is no such impediment. There are no adverse cases to be cited—no decisions of doubtful worth and strength depended on, or to be shaken by the advocate and overruled by the superiority of the sitting to the case-deciding judge. All depends upon evidencing facts peculiarly within the plaintiff's knowledge. There is little (I may say, not any) uncertainty as to what verdict will lie, in a cause which the plaintiff must know is either a good or a bad one. If the injury be real, and the plaintiff's conduct unimpeachable, there is little to fear from that uncertainty of the law usually termed "glorious." As to the expence, this falls, where justly it should, on the wicked faithless defendant. There is hardly a member of the profession who would not take up the cause of an injured woman: some from motives of kindness and compassion, and the rest for profit. Plaintiffs are therefore not prejudiced by the expence, and as to the uncertainty of success, which may be considered as causing the expence, this rests within their own knowledge, and they must take the consequences of bringing actions of doubtful propriety. I see no reason why, when expences are no hindrance to the fair and honest plaintiff, cases of a very speculative nature as to success should be so much cared for. These last have the greatest cause for alarm, and as the evil stated in the bill applies only to cases which are unfit to be brought before any tribunal, why should not we be content with screening them out from the superior courts, without raising up new forums where the plaintiff or the attorney may try at a small charge, a case which they doubt, (which doubt would not exist in an honourable case), whether it would bear the charge of a judge, or the scrutiny of a jury?

If the poverty of the defendant be adduced as a reason for the proposed change, I also bring that forward as a ground of opposition: "why bring the action at all." If the defendant be not able to compensate in damages, what recompense will be obtained by a vindictive imprisonment, which he would undergo in the one case on a *ca. m.*, and under the bill, if passed, by certificate of *nol/a bond*. Surely if the defendant be so poor, a breach of promise were a kindness rather than a crime, and it must be recollected that the plaintiff may have been much to blame.

As I have said before, these cases do not involve points of law. Seduction and breaches of promise are not mentioned in Banco. Some stray cases may be unwillingly waylaid in the pleadings, and brought before their lordships, sitting collectively, but it is in a strange locality. Some unfortunate defendant may seek, in the calm and legal frigidness of the Court, some relief against the excited feelings of an indignant jury; but no cases are cited, and there is no rule. The cases are solely those of feelings, and of any are the most proper both for plaintiff and defendant to be tried by a jury. I cannot, therefore, but deprecate a bill which proposes to centre in justices of the peace the offices both of judge and jury—not so valuable as a jury, because the charge of the judge is wanting; and not so efficient as judges, because they also are a jury. Either their character as judges will interfere with the feelings which ought to actuate them as a jury, or their situation as a jury will run riot without the benefits of a charge from a judge. The two offices are incompatible, and when we so often hear our present learned judges object to being placed in the situation of a jury, we should hesitate before placing such a double duty on the shoulders of inferior officers.

It will be said that the plaintiff is not by the bill deprived of the benefit of a jury, or the superior courts, and the remedy will be cumulative. But the defendant will be, and he is as much to be considered as his opponent; and our care for him should only decline when he has been by a verdict convicted. It is inverting the order of things to say that the guilt of the defendant should give to the plaintiff a preference of tribunals; for the trial is to determine whether he be really guilty. The words *plaintiff* and *defendant* are not always synonymous with *injured* and *injurer*.

I object strongly to the power of dragging a defendant before a juryless tribunal in such cases; trying him, but not by his peers—depriving him of the benefit from the superior courts, with no certainty of assistance, no choice of advocates, or removal of his cause to

a purer atmosphere—no appeal in any shape from the decision of his judges. Everything against him—all haste, no deliberation, no time, no opportunity for reflection. Why should cases of this kind be considered so far inferior to cases of debt or goods sold? Why should the latter be protected by superior judges, juries, pleadings, advocates, assistance to justice of all kinds, appeals that justice may by all means be done, whilst, when the subject matter is of much greater importance, the common decency of even a jury, like that of a Requests Court, is not bestowed upon cases of seduction and promises of marriage?

I object to the bill because it is a remedy without an evil to support it; and if viewed as an original measure, it is useless to the plaintiff, and most unjust and unconstitutional towards the defendant. Without going into the minute part of the bill, these are the grounds on which I should wish to see it rejected.

G. H.

REMOVAL OF THE COURTS.

PETITIONS to the Houses of Lords and Commons for the removal of the Courts from Westminster to the neighbourhood of Lincoln's Inn have been prepared pursuant to the resolutions at the General Meeting on the 8th instant, reported in our last Number. These petitions lie for signature in the Hall of the Incorporated Law Society, and may be signed by any attorney or solicitor residing in the Metropolis, although not a member of the Society.

Seven or eight petitions from attorneys residing in different parts of the country have been presented to the House of Commons for the same purpose, and we understand that many others are in readiness, and that a large majority of the profession is decidedly in favour of the measure.

We learn also that the merchants and bankers are about to send up petitions to the like effect. It will be recollected that, although commercial causes are tried at Guildhall, the validity of the verdicts must at present be discussed at Westminster; and that a large part of the wealthy merchants and bankers reside at the west-end of the town, and might conveniently see their legal advisers and visit the Courts in their way to the city, if the proposed measure were carried into effect.

The citizens, in Common Council assembled, will probably also give their support to the measure. The concentration of the Courts of Justice on the borders of the cities of London and Westminster will be generally beneficial to both parts of the

* There was one lately in a case of seduction: it arose on the pleadings as to the allegation of servitude. This is a mere technicality in the pleadings, and the favor which the slightest evidence of servitude receives ("she made tea in her father's house."—*Gibb's address to a jury*.) has reduced it to a technicality of evidence.

Metropolis. The magnificence of the proposed structure, and the approaches to it, will accord with the improvements in progress within the walls of the city.

It appears that the plan of Mr. Barry will soon be ready for inspection, and that lithographic copies will be submitted to the Judges of all the Courts and to the Bar, as well as to the Law Lords, and to the members of the profession in Parliament.

We trust the subject will be patiently considered, even by those who at present may be disinclined to the change, and we shall then have no fear that the exertions of the promoters will be crowned with success.

On this subject we have received the following suggestions:

1st. as to the *general* structure of the building. Not only the proceedings and forms, but the very Court itself, should be so constructed as to impress the minds both of the practitioner and suitor with the solemnity of its nature and object. Too little regard has of late been paid to this portion of jurisprudence; and it is worthy of remark that the respectability of our profession somewhat depends upon this point. A Court of Justice should be resorted to by all persons with the same veneration, with which we enter the lofty Cathedral,—gazing upon the settled rules and practice of the court as the remnant tablets of ancient wisdom. Raise the character of the place, and you at the same time elevate that of the men. According to the respect paid to the place will the practitioner be treated. A volume might be written upon this branch of the law, but a hint only is necessary for my professional brethren.

The 2d. suggestion refers to the *particular* structure of the building. It should be rather too large than too small,—then it will be fitted not only for general, but special occasions,—not only for ordinary but great popular enquiries. Ample convenience should be provided by distinct entrances for the auditory—the judges—the counsel, and the practitioners. With respect to the latter, the counsel and attorney—its convenience should be such as to enable the attorney to have free communication, with both the leading and junior barrister, and also to have sufficient accommodation for the arrangement of papers and documentary evidence, which devolves more especially upon the attorney. Many verdicts have been lost, and the attorney been prevented from doing his duty, on this account. It might also be useful, and tend to sustain the practitioner's regard to learning, if he were expected by the court to appear on all occasions before the judges in a plain robe.

The 3d. suggestion applies to the present remuneration for attendances before the court, and at chambers. I would not advocate an excessive fee, but it should be consistent with the duty required. This arrangement, with a judicious list of business for each day, after the

disposal of motions, would increase the costs only for actual duty, which would be equal merely to the present fees for supposed duties. Then as to the fee for attending the judges at chambers: its present amount for considering, attending, and arguing a summons on which frequently the whole fate of the cause depends, is absurdly inadequate, but all unnecessary summonses: such as to "plead several matters,"—to "stay proceedings" where the opponent has arranged to consent, &c. should be discontinued, and a proper fee allowed for attendances in general, with power to the judge to certify for the non-payment or disallowance, where either party may fail, or there may not appear probable grounds of success or opposition.

J. C.

THE STUDENT'S CORNER.

To the Editor of the Legal Observer.

MOOT POINT.—SINGULAR CAPTION.

Sir,

A CASE having occurred under the old law of arrest, in an adjoining neighbourhood, respecting a seizure under circumstances of a peculiar kind, and which, as it involves the interest of parties in a suit that now remains a matter of much dispute, I take the liberty of troubling you with an account thereof, in order that some of your ingenious correspondents may be able to throw some light upon the subject.

A debtor on being closely pursued by a sheriff's officer, in which the chase was for some time warmly maintained, succeeded at length in reaching his own door, but before he had well entered and closed it upon his pursuer, the latter caught hold of his victim's leg, giving at the same time a loud shout of triumph at his success. His congratulation was, however, but of short duration: the tug was so violent as to leave the captured member in the grasp of the officer. The latter stood for a moment or two aghast at the mutilated stump, expecting nothing more or less than an indictment for mayhem. His surprise was now turned into a new channel, when he saw the owner of the leg, not writhing with agony upon the floor, but grinning at the window inside the house to see his astonished pursuer. The secret was now out—the mortified agent of the law discovered that he was in possession of the defendant's leg most certainly, not however of fleshly mould, but an artificial one, curiously made of cork, and far less in value than the amount of the debt and costs, sheriff's poundage, &c. &c. The officer stared, while the culprit, who it was quite evident, had eluded the other's legal clutches, simply by "putting his best foot forward," remained still grinning at the disappointment which the officer in vain attempted to hide, and which was by no means allayed by the shouts of the surrounding multitude, whose quaint and original ideas of liberty, render

them at all times prone to laugh at the distresses of a bailiff, sheriff's officer, or thief taker. The officer however and the plaintiff were determined not to abandon the point so easily, they insist (on the advice of counsel) on the above transaction being a good legal capture. That had the substituted member been a regular antighallican timber toe, bearing all the outward marks of a wooden leg that was not ashamed of itself, and without any disguise whatever, the defendant might have treated the event as being no caption at all, as he himself contended he had a right to do, for in this case, it might have been urged on his behalf, that it was then no more than snatching the defendant's walking stick out of his hand, and calling that a caption of the person. But in the present instance, as the owner had so disguised the member by decking it out with a gaiter and shoe, precisely like the other, and for years had made it pass current for a natural leg, as if twin-born with its fellow:—having as it were, gained for it in the world, all the reputation of a legitimate birth, and having apparently treated it with equal tenderness as if it could reciprocate the feeling, he was according to the plaintiff's argument bound by such a reputation, and ought not to be at liberty by disowning the adventitious member at pleasure, to take advantage of his own deceit, which the law abhors. He would otherwise for years past have been a walking fraud. Thus stands the case. Was the capture good or no? and give a reason for your answer.

LEG BAIL.

[We think the writer of this letter is well known to the profession for his learning and facetiousness.]

ED.

SELECTIONS FROM CORRESPONDENCE.

To the Editor of the Legal Observer.

RECOVERY OF TENEMENTS ACT.—EVIDENCE.

A. B. is desirous of obtaining possession of a cottage &c. (of the yearly value of 5*l.*.) under the "Act to facilitate the recovery of Tenements, after due determination of the tenancy," (1 & 2 Vict. c. 74.) The agent of the landlord A. B. personally served the usual notice to quit, signed by himself as such agent.

At the expiration of the notice the agent gave notice of his intention to proceed to recover possession under the authority of the above act.

The tenant does not appear, but the justices object to issue their warrant, on the ground that the agent having *mself signed* the notice to quit, is incompetent to prove its service. There is no other question as to the determination of the tenancy. It is submitted that an agent, in no way personally interested in the matter, is a competent witness for his principal, and that the 1 & 2 Vict. c. 74,

(which was expressly passed to facilitate the recovery of small tenements of this description) does not alter the law as regards the service of the notice to quit.

If any of your numerous readers can refer to a case decisive on this point, it will be esteemed a favor.

LX.

ESTATES PUR AUTRE VIE.

Sir,

YOUR correspondent—"A Country Reader"—Vol. XIX, p. 459, in the case of *Ripley v. Waterworth*, 7 Ves. 426, to which he refers, evidently labours under a misconception of the point that was decided by it, and which decision, I humbly submit, does not "settle the point" that his enquiry relates to, (*viz.*) whether a devise of an estate "*pur autre vie*" limited to the testator devising it, "his executors, administrators, and assigns," will vest it at once in the devisee? What was in fact (among other points) decided in the above-cited case was—that an estate "*pur autre vie*" originally granted to a man, his executors, administrators, and assigns, and which is not duly disposed of by his will, devolves on the executors, and, subject to the payment of the debts, they are trustees for those who are entitled to the general residue of the personal estate of their testator. Now, in the present case, your correspondent sets out by stating that *there is a devise of the estate, and, I have a right to presume, by a will duly attested to pass the legal interest in an estate "pur autre vie;"* for, according to the language of Lord Eldon, in *Ripley v. Waterworth* (see 7 Ves. jun. at p. 451) such an estate is "devisable as to the legal interest, only with three witnesses."

That there was no such devise of the estate in *Ripley v. Waterworth* is evident upon reading the case over, as well as from the tenor of other parts, besides that above-quoted, of Lord Eldon's learned and elaborate judgment, in the course of which he compares that part of it which related to the estates "*pur autre vie*" to the case of *stock*, which (he adds) is to be disposed of by will only with two witnesses, and of which (his lordship further observes) "Lord Thurlow said where it is not so bequeathed, devolving upon the executor, it devolves upon him as executor in trust for those who are entitled to the personal estate;" and then (reverting to the case before him) he (Lord Eldon) finally states—"Upon this case I am of opinion the executor is in this Court a trustee for those to whom the testator has given the personal estate by a will sufficient to pass personal estate only, and therefore he (the executor) must be considered as holding it for the residuary legatee."

I think it is to be assumed that if there had been a devise of the property involved in that case by a will duly attested to pass the legal interest, Lord Eldon would not have made the remarks above, nor would the Court have had any doubt that the estate was vested by it at once in the devisee. Presuming therefore I am correct in supposing such a *duly attested* devise to exist in our present case, this part of your

correspondent's query may be answered in the affirmative; and, as to "whether he will have to take a conveyance from the executor?" I will only call his attention to a note appended to that part of "The Fourth Report of the Commissioners appointed to inquire into the Law of Real Property" which is numbered 7, and is entitled—"Of the proof or probate of wills," in which, after speaking in the text above of wills with reference to estates "*pur autre vie*," (and which the learned Commissioners, by the way, state plainly, *if duly attested according to the Statute of Frauds*, will pass such estate to the devisee at law), this observation occurs—"It appears to be the better opinion that estates '*pur autre vie*,' *duly devised* are not *personal* assets, although limited to executors or administrators, or there be no special occupant [Fonblanque, note to 2d Vol. Treat. Eq. 2d edit. 396]," therefore it is unnecessary to obtain the assent of the executor to the devise.

T. H.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—PARTIAL HEARING OF CAUSES.

It is irregular to bring a cause on for hearing, for the purpose of taking the opinion of the Court on some question in it, until the cause is ripe for a full hearing.

The testator in this case left the residue of his property, after the payment of his debts and legacies, for the benefit of the city of Decca, in Hindostan, the money to be expended in useful and beneficial purposes, under the direction of the Government of India. The question as to the validity of this bequest was partly argued some time ago, but in consequence of there being a doubt suggested by the Court, whether the Board of Control, or the East India Company was the government of India, (and there being no party representing any government of India,) a reference was sent to the Master to ascertain that fact. The Master having his attention drawn to the acts of parliament on the subject, was of opinion that the Governor General of India exercised all the functions of the government, and that officer having been now made a party to the suit, the case was again brought on for hearing.

Mr. Bethell was proceeding to state the nature of Mr. Mitford's will, when

The Lord Chancellor observed that he perceived no account in the Master's report of the debts due by the estate, or of the amount of surplus, or that there was any surplus.

Mr. Bethell said, it had been agreed between the parties to take the opinion of the Court on the validity of the bequest to the city of Decca, without that inquiry, as there was no doubt there would be a large surplus.

The Lord Chancellor, said he should not hear the cause under such circumstances. It was an attempt to take the opinion of the Court on a question that might never arise in

the cause, as, until the accounts were taken and the debts paid, no one could tell whether there would be a surplus or not. If the cause was heard under such circumstances, a very bad precedent would be set. And besides there were causes enough before the Court, ripe for hearing, without being called to volunteer an extra-judicial opinion in a matter, which was not regularly before the Court. The matter must go back to the master, and when the amount of the surplus shall be ascertained, the argument on this question may be taken up at the stage where it left off at the time the reference was first directed.

Mitford v. Reynolds,—At Westminster, May 2d, 1840.

Rolls.

PRACTICE.—INFANT.—NEXT FRIEND.

A bill having been filed on behalf of infants by a person who was a stranger to them as their next friend, and not for their benefit but for collateral purposes, the infants, or either of them, coming of age, are entitled to have their names struck out of the bill with costs of that application; and sensible, that even before coming of age they may have a reference to the master to inquire whether the suit is for their benefit or prejudicial to them.

The bill in this case was filed some time ago in the name of Maria Guy and Mary Guy, both then infants, by William Carns as their next friend. Maria, the elder of them, having since attained her age of twenty-one, a motion was now made on her behalf that Carns might be restrained from taking any further proceedings in the suit in her name, and that her name might be struck out of the bill, and that Carns might be ordered to pay the costs of this application, and also that it might be referred to the master to inquire whether it was for the benefit of the other plaintiff, Mary Guy, still an infant, that the suit should be further prosecuted on her behalf. The facts were these: Both the young ladies were under their father's will interested in his estate (which consisted chiefly of a house and public business at Portsmouth), together with George Guy, who in December 1838, took the benefit of the Insolvent Debtors' Act, when one Elgie was appointed his assignee. From Elgie's affidavit it appeared that the majority of the creditors being adverse to the institution of a suit for the administration of the testator's estate, he thought it right that for the purpose of getting an account of it and for securing for the creditors the insolvent's interest in the property, a bill should be filed in Chancery in the name of the testator's infant children, if such bill could be properly filed. He therefore had a case prepared and laid before counsel, and a favourable opinion having been given, he procured the consent of Carns to the bill being filed in his name as next friend of the infants. The plaintiffs, for the purpose of this motion filed affidavits denying that they ever gave their consents to the institution of the suit, and declaring

that its continuance was against their wishes, and would be prejudicial to their interests. Their mother also, the testator's widow and executrix, and William Purchase, one of his executors, made affidavits to the same effect. It appeared also that Carns was a stranger to the infants. The avowed object of the suit was to secure the profits of the testator's business, which pursuant to the directions in his will, the executors had permitted his widow to continue for the maintenance of herself and family, whose whole support was derived from the profits arising from this business.

Mr. Pemberton and Mr. Keene, in support of the motion.—The plaintiff, Maria Guy, was entitled to have her name struck out at all events, and upon the evidence, from which it appeared that the suit was not instituted for the benefit of the infants, but of the creditors of an insolvent, it was not too much to ask the Court to dismiss the bill altogether. They cited the case of *Acres v. Little*,^a as to the first part of the motion.

Mr. Bethell and Mr. Puller contended that the motion being made by one plaintiff alone, the Court could do no more than direct a reference to the master, since to order the name of one plaintiff to be struck out would be prejudging the question as to whether the suit was properly instituted. The Court could not dismiss the bill as to the infant, the notice of motion only asking for a reference as to her, and the next friend being therefore unprepared to prove the propriety of the suit.

Lord Langdale, M. R.—This motion made by the plaintiff, who has attained her majority, has two objects; first, to strike out her name from the record; secondly, to have a reference to the Master to inquire whether the suit is for the benefit of the other plaintiff, who is still an infant. It has long been an established rule in this Court that any body may file a bill for the benefit of an infant, but it has been also a rule that the person who takes upon himself to do so must be able to shew that the suit was instituted for the benefit of the infant, and not for any collateral purpose, and that it is not likely to be prejudicial to the infant. It has always been considered a very suspicious circumstance that the next friend is a stranger to the infant. It would not be an objection that the next friend did not consult the infant before filing the bill, or that the infant on coming of age repudiated the suit. It appears that that suit was not instituted for the benefit of the infants, but for the benefit of another person having an interest in common with the infants in the testator's estate. The next friend is a stranger to the infants, and was induced by the assignee of the insolvent to file the bill, without the consent of his creditors. One of the infants having come of age is desirous of withdrawing from the suit. The answer given to that is, not that the suit was for the benefit of the infants, but for that of the creditors of the insolvent. I think the infant who is come of

age is entitled to have her name struck out of the bill, and the costs of this application paid to her. I shall not on this motion make any order as to the infant plaintiff, but will leave it open for an application on her behalf to dismiss the bill or otherwise, as she may be advised.

Guy v. Guy.—At Westminster, April 23d, 1840.

Queen's Bench.

[Before the Four Judges.]

PROHIBITION — ECCLESIASTICAL COURT.

In a writ de contumace capiendo, it is not necessary that it should appear that the cause of contempt arose within ten days after sentence pronounced in the Ecclesiastical Court.

The writ need not literally follow the form given in the schedule to the statute. It will be good though some superfluous words are omitted.

*The burden of shewing that the court had no jurisdiction, in consequence of the suit being for rates below the sum of 10*l.* lies on the party impugning the writ.*

Process in an Ecclesiastical suit may be good though issued by an official principal against a party resident within the jurisdiction of a commissary appointed within the limits of the same diocese.

An inhibition from the bishop suspends the powers of a commissary as well in contentious as in voluntary jurisdiction.

In this case a rule had been obtained to set aside the writ *de contumace capiendo*, which had been issued against the defendant, and to discharge the defendant out of custody. The grounds of objection stated when the rule was obtained were, that this writ had not been issued by the commissary of the Bishop, but by the vicar general, that the authority of the latter extended over the whole of the diocese, except that portion of it which was placed under the special jurisdiction of the commissary; that the defendant resided within the limits of the jurisdiction; and it was therefore objected that the defendant, if at all liable to be cited before the ecclesiastical court, ought to have been cited before the commissary, and not before the official principal and vicar general. It was further objected that he was not liable to be so cited, for that this was a case for the recovery of a church rate under 10*l.*, and therefore it fell within the 53 G. 3, c. 127, s. 7, and that the jurisdiction of the Ecclesiastical Court was not specifically shewn upon the face of the writ to have attached; for it was quite consistent with all the facts that were stated on the face of the *significavit* on which the writ *de contumace* issued that that court might have no jurisdiction in the matter. It was contended that it was absolutely required by the law that the jurisdiction of the court should be clearly and specifically shewn. It was further objected that the forms given by the above statute

had not been duly pursued, that certain words which were to be found in the statute and which alluded to the bishop's citation, were omitted from the significavit, and that it was not stated that the cause of commitment had arisen within ten days after sentence. It was further objected that the additions to the name of the party were not set out according to the provisions of the statute 5 Eliz. c. 23, s. 13,^a so that it did not appear whether the defendant was a knight, esquire, or yeoman, or what was his degree.

Sir *W. Follett* shewed cause.—It is quite clear that the Ecclesiastical Court has jurisdiction in this case. The significavit states, that the defendant was in manifest contempt in not appearing before the ecclesiastical judge. The question as to the jurisdiction in cases where the sum is under 10*l.* was raised in the case of *Bodenham v. Rickets*,^b and it was there decided that the jurisdiction of the Ecclesiastical Court was not taken away in all cases where the amount of church rate claimed did not exceed 10*l.* but only in those cases where the validity of the rate and the liability to pay were not disputed. Here these matters were disputed. As to the alleged want of additions to the defendant's name, the proceedings here are not taken under the statute of Elizabeth, but under the statute of Geo. 3, and the form given in the latter, does not contain the additions now asserted to be necessary. The form there is "one — of — in the county of —." The facts on which the writs have been issued are said not to be fully set out on the face of the proceedings, but the facts themselves are not denied. As to the supposed want of authority in the vicar general and official principal to interfere in the district over which a commissary had been appointed, the answer is, that the authority of the commissary had at the moment of the citation in this case been suspended by inhibition, the bishop himself being at that moment engaged in a visitation in that part of the diocese. Besides this, the patent by which Dr. Lushington was appointed vicar general and official principal made no exception of any particular district, but appointed him to have authority over the whole diocese. On either of these grounds therefore, his jurisdiction is sufficiently made out. The facts that were to establish that jurisdiction are not controverted, and the proceedings are within the statute which now regulates cases of this kind.

Sir *F. Pollock*, Mr. Serj. *Manning*, and Mr. *Roebuck*, in support of the rule.—The authority of the vicar general and official principal and

that of the commissary are fully explained in Burn's Ecclesiastical Law.^c The two officers cannot have jurisdiction over the same place at the same moment. The authority of the commissary must prevail in the particular district assigned to him, for that district is specially carved out of the general jurisdiction of the official principal, and it is, notwithstanding any general words, in the appointment of the latter officer. The inhibition has nothing to do with this case, for Dr. Burn^d shews that an inhibition affects only a voluntary, not a contentious jurisdiction, and that is especially the case where, as in the instance of the commissary, the officer is appointed for life. The jurisdiction here is a contentious jurisdiction. Then as to the statement of the facts. On the face of the proceedings, it is clear that they ought to be fully set forth, so as to shew that the jurisdiction of the court has attached upon them. *The King v. Dugger*,^e and the *King v. Fowler*.^f They are not so stated here either as to the amount of the rate or as to the time when the writ for the alleged contempt issued. Then as to the statement of the defendant's name. It is this "John Thorogood of the parish of Chelmsford, in the county of Essex." This is clearly an insufficient statement: it would be so in an affidavit to hold to bail, and must be so here.^g The full statement of the additions of the party is required in the writ *de excommunicato capiendo*, under the statute of Eliz., and the statute of Geo. 3, only substitutes the writ *de contumace* for the writ *de excommunicato*. The want of the additions cannot be excused on the ground of immateriality; for in *Smith v. Crume*,^h on an objection of this sort to a writ of summons, Mr. Baron *Parke* said that he could not in such cases enter into the question of immateriality, and that opinion is supported by the cases of *Smith v. Pennell*,ⁱ and *Byfield v. Street*.^j In other respects the provisions of the two statutes are the same. There is throughout a deficient statement of the facts that are to give jurisdiction to the court. It is plain that the citation here was had, being by the vicar general, when the party was within the jurisdiction of the commissary. Such citation of him was contrary to the provisions of 23 Hen. 8, c. 9, which was passed to prevent the abuse by the Ecclesiastical Court of dragging people to a great distance from their homes. That statute was acted on in *Jones v. Jones*,^k and process there was set aside, because it was issued from a distant court, when there was a court nearer the party's residence where he might lawfully have been cited. On all these grounds it is

^a By which it is enacted, "That if the offender, against whom any such writ of *excommunicato capiendo* shall be awarded, shall not in the same writ have a sufficient and lawful addition according to the form of the 1 Hen. V. then all and every pains and forfeitures limited against such persons *excommunicate* by this statute by reason of such writ wanting sufficient addition &c., shall be utterly void in law.

^b 1 Har & Wol. 753; 4 Ad. & El. 433.

^c Tit. Chancellor.

^d Ecc. Law, Tit. Chancellor.

^e 5 Barn. & Ald. 791.

^f 1 Salk. 293.

^g Tidd's Appendix.

^h 1 Dowl. Prac. Cas. 519.

ⁱ 2 Dowl. Prac. Cas. 664.

^j *Id.* 739, and the cases there cited.

^k Hob. 185, see also *Dr. James' case*, Hob. 17.

clear that the proceedings here are irregular; the defendant is entitled to have them set aside, and to be discharged out of custody.

Cur. adv. vult.

Lord Denman, C. J., on the day after the argument, delivered judgment.—A great many objections have been taken in this case to the writ *de contemptu capiendo*, which this Court has been called upon to quash, together with all the proceedings taken in the Ecclesiastical Court. Several of these objections are with relation to matters which are apparent upon the face of the writ itself, and others were taken as arising on the facts proved in the course of the suit. The first objection is, that it does not appear that the cause of commitment had arisen within ten days after sentence pronounced in the Ecclesiastical Court. But there is no doubt whatever that this statement of time is a mere matter of practice in the Ecclesiastical Court itself, and it must be presumed that that practice had been duly acted on. The second objection is, that certain words are introduced into the writ which are not in the form given in the schedule to the statute. The answer to that objection is, that the words are superfluous, and that they do not in any way affect the sense of the document. The third objection is that the matter before the Court below does not appear to be matter of spiritual cognizance, for the writ does not assert that there was any question raised as to the validity of the rate, nor that the subject-matter in dispute was under 10*l*. The answer to that objection is that all rates were originally of spiritual cognizance, and so continued up to the 53 Geo. 3, which excepted certain cases under certain circumstances from the cognizance of the Spiritual Court. On that answer is raised the question whether the party who supported the jurisdiction is not bound to shew that the case does not come within the exceptions contained in the statute. We are of opinion that he is not bound to shew that, but that it lies on the defendant to shew that the case does not fall within the exception, and not on the Court to negative the existence of the exception; for it must be presumed in the first instance that the Ecclesiastical Court is rightly exercising its old jurisdiction. The fourth objection is, that the proceedings are bad for want of the addition to the name of the party. The answer to that objection is, that if this was not rendered unnecessary by the form in the schedule, given in the statute of 57 Geo. 3, still, on looking into the 5th of Eliz. it is found that the writ itself is not vitiated by an omission of this sort, but that the pains and forfeitures merely are made void. The imprisonment here, however, was not inflicted as a pain and forfeiture, but as a proceeding to enforce obedience to the decision of the Court. The decisions therefore on the statute of Eliz. do not apply. The fifth objection is, that though Dr. Lushington held the two offices of official principal and of commissary, the one was independent of the other, that the office of commissary was for life, and yet that here though the defendant

resided within the district of the commissary, he was cited before the official principal. This objection is answered by the fact that the bishop, before the sentence pronounced, had issued his inhibition to the commissary; but to that it is replied that such inhibition could only suspend the power of the official principal in contentious, not in voluntary jurisdiction. That distinction is not supported by those books to which, in cases of this kind, the Court is bound to have recourse, and it does not appear to the Court to be well founded in principle. The inhibition indeed, seems to follow on the bishop's actual residence within the district over which the commissary exercises jurisdiction, and it suspends all that officer's powers. The bishop brings with him into the commissary's district all the powers which during his absence were exercised by his officer; so that for the time that officer's powers are at an end, and thus that objection is answered even if another answer did not exist; namely, that even when both offices are in full vigour, the official principal may have a concurrent jurisdiction with the commissary. Then there is an objection raised on the statute of Henry 8, that the appointment of the commissary constituted the district of "a peculiar" existing within the limits of another jurisdiction, and that a party cannot lawfully be summoned from a nearer to a more distant Court. But the Court does not adopt this objection, thinking that the word "peculiar" is not to be understood in its ordinary sense as something taken out of a general jurisdiction. But beyond this it appears that the peculiar jurisdiction, whatever it was, had been for the time put an end to by the bishop's inhibition. The whole of the objections to these proceedings are therefore answered, and are answered upon grounds which do not call in question the opinion of Lord Tenderden in *The King v. Dugger*, nor the doctrine of Lord Talbot, to which Lord Tenderden there refers. The rule must therefore be discharged.

Rule discharged.—*The Queen v. J. Thoroughood*, E. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

DISTRINGAS.—DUE DILIGENCE.—CHRISTIAN NAME.—SURNAME.

Where a defendant's christian name cannot be discovered, although due diligence has been exerted to find it out, the court will allow a distringas to issue in the defendant's surname only.

This was a motion for a distringas. There had been the usual calls and appointments; and the peculiarity in the case was, that the application arose out of a bill of exchange accepted by Burghart and Webb; but the motion for a distringas was against Webb solely, his christian name not being stated. The affidavit stated that all reasonable diligence had been used to find out the defendant's christian name, but without effect.

Williams, J., granted the distringas.
Smith v. Webb, E. T. 1840. Q. B. P. C.

Common Pleas.

GOODS SOLD AND DELIVERED.—PLEADING.

*To an action for goods sold and delivered, the defendant pleaded as to 60*l.*, parcel, &c. that the plaintiff had drawn and that he had accepted a bill for 60*l.*, which the plaintiff had received and accepted on account of his claim. It appeared that the defendant had sent a blank acceptance for 60*l.* from the country to the plaintiff, but that the latter had subsequently drawn the bill, altering its amount to 46*l.* The bill on its presentment was not paid: Held, that the plea was no sufficient answer to the declaration, and that the plaintiff was entitled to a verdict.*

Talfourd, Serjt., moved for a rule calling upon the plaintiff to shew cause why the verdict found for him at the trial of this cause on the third issue should not be set aside, and entered for the defendant. It was an action on a bill of exchange, and also for goods sold and delivered, and after two pleas, immaterial to the present motion, the defendant pleaded specially as to 60*l.*, parcel of the sum claimed in the count for goods sold and delivered, that the plaintiff had drawn a bill for 60*l.* on the defendant, which the defendant had accepted, and which the plaintiff had received and accepted on account of the claim now set up.

The cause was tried at the Sittings in London after Hilary Term, before *Tindal, C. J.*, and it then appeared that the defendant lived at Oxford, and had dealt with the plaintiff in London for goods. A claim having arisen against the defendant, the plaintiff sent down a bill for a certain amount to be accepted by the defendant, but the defendant objecting that the sum for which that bill was drawn was excessive, on the 10th of January, 1839, the plaintiff wrote down to him again, requesting the return of the bill already transmitted to him, and that the defendant would send up his acceptance on a stamp for such an amount as he considered to be due, at nine months' date. The defendant in consequence forwarded a stamp to the plaintiff, the amount "60*l.*" being written in the margin, the form of the bill being commenced by the introduction of the words "Nine months after date," and his acceptance, payable in London, being indorsed upon it. The plaintiff subsequently filled up the bill, altering the figures 60*l.* to 46*l.*, and on the day on which it became due it was presented, but not paid. Upon these facts the jury returned a verdict for the plaintiff on this issue; but it was now urged that the acceptance for 60*l.* transmitted by the defendant was a complete instrument at the time of that indorsement being made, and was a good answer to 60*l.* of the claim made. The defendant could not know, at the time of its presentment, that the bill for 46*l.* was the same which he had accepted, and, for any thing he knew, the 60*l.* bill might be still out against him. The plaintiff having accepted that bill on account of his demand, the pleas must be

considered a sufficient answer to the count, and the defendant was entitled to a verdict.

Tindal, C. J.—The difficulty here arises upon the terms of the plea. The defendant takes on himself to say that the plaintiff drew a bill for 60*l.*, which the defendant accepted. It appears by the correspondence, that the plaintiff requested the defendant to send him up an acceptance for the amount which he thought correctly due, adding "which we can draw here." Therefore the drawing was to be in London. What was sent up was a blank acceptance, with the amount only named, but there had been no drawing of the bill at all at that time, nor were there any terms of a bill need. When it came to London, the plaintiff drew the bill for 46*l.* only. How can that be said to be a drawing for 60*l.*, which the defendant accepted?—the bill not being completed until it came to London, where it was drawn only for 46*l.*

Bosanquet, J., and *Coltman, J.*, concurred.

Erskine, J.—If the plaintiff had filled up the bill as for 60*l.*, the order in which the acceptance and drawing took place would have been immaterial; but in point of fact there never was a bill for 60*l.* in existence.

Rule refused.—*Baker v. Jubber, E.T. 1840. C. P.*

Exchequer of Pleas.

PALACE COURT BAILIFF.—TRUSTEE AND CESTUI QUE TRUST.—DAMAGES.

In an action brought in the name of the Marshal of the Palace Court, for the benefit of a suitor in that Court, against a bailiff, for disobeying an order of the Court, it is not necessary that it should appear on the declaration that the plaintiff has been individually damaged.

Warren moved in this case to reduce the verdict to nominal damages. It was an action brought by Sir C. M. Lamb, marshal of the Palace Court, against Vice, one of his bailiffs, and four other defendants, his sureties, on a bond given by them to the plaintiff, conditioned (*inter alia*) that the obligor, Vice, should take sufficient bail for every defendant who should be arrested in the said Palace Court; and also that the said defendant, Vice, should obey all orders to be made by that Court. The declaration then alleged that a certain action had been commenced in the Palace Court, the defendant in which was arrested, and delivered to bail; but that the bail taken for him by the defendant Vice, were insufficient and worthless; that the cause was afterwards removed by a *habeas corpus cum causa* into the Queen's Bench, but returned to the Palace Court by a writ of *procedendo*; that the now plaintiff then required the now defendant to produce the body of the defendant in the said action, which he however failed to do; whereupon the plaintiff, according to the practice of that court, made an order on the defendant to pay the debt and costs, amounting in the whole to 66*l.* 9*s.* 4*d.* that the defendant not having paid the same in obedience to the said order, had thereby

broken the condition of his bond, &c. which thereby became forfeited, &c. The defendants having suffered judgment to go by default, a writ of enquiry to assess damages was issued, and came on to be tried before Lord Abinger, C. B. when the order was put in and proved: it was also proved to be the practice of the Palace Court, whenever orders like the present were disobeyed, to allow the party injured thereby to bring an action on the bond, and use the name of the marshal for the purpose. On this the jury, under the direction of his Lordship, found for the plaintiff for the full amount of 66*l.* 9*s.* 4*d.* with leave to the defendant to move to reduce it to nominal damages.

Warren now contended, that as the declaration did not shew any actual damage or liability incurred by the plaintiff, in consequence of the breach of the condition of the bond, he was only entitled to recover nominal damages, and to have the judgment entered for him to stand as a security against future breaches. There is no instance at common law, where a party suing can recover more than nominal damages when no actual injury has been sustained by him.

Parke, B.—If the condition of this bond was merely to indemnify the plaintiff against actual loss, there would be considerable weight in your argument. With respect to a case of a bail-bond before the statute of Anne, by which the sheriff is rendered compellable to assign it, it was understood that there was an equitable right in the party to compel the sheriff to allow him to sue on the bond in his name, in which case he surely would be entitled to recover for the benefit of the assignee the full amount of damage sustained; for the condition of the bond once broken, it would be a question for the jury to assess the damage sustained by the plaintiff, as trustee for a third person. So here, the plaintiff is trustee for the parties who may be really injured by the breach of the conditions of this bond. On the face of the bond it appears, that it must have been made for the benefit of some one else; and the very form of the instrument indicates that the plaintiff has taken it in his own name as trustee for other parties.

Rule refused.—*Lamb v. Vice and others, E. T. 1840.* Exch.

CHANCERY SITTINGS.

Trinity Term, 1840.

Before the Lord Chancellor.

AT WESTMINSTER.

Wednesday May 27	Appeal Motions and Appeals.
Thursday .. 28	Petition Day.
Friday .. 29	} Appeals and Causes.
Saturday .. 30	
Monday June 1	
Tuesday .. 2	
Wednesday .. 3	

Thursday .. 4	Appeal Motions & Ditto.
Friday .. 5	} Appeals and Causes.
Saturday .. 6	
Monday .. 8	
Tuesday .. 9	
Wednesday .. 10	
Thursday .. 11	Appeal Motions & Ditto.
Friday .. 12	} Appeals and Causes.
Saturday .. 13	
Monday .. 15	
Tuesday .. 16	
Wednesday .. 17	Appeal Motions & Ditto.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the Vice Chancellor.

AT WESTMINSTER.

Wednesday May 27	Motions.
Thursday .. 28	Petition Day.
Friday .. 29	} Short Causes, Unopposed Petitions, Pleas, Demurrers, Exceptions, and Further Directions.
Saturday .. 30	
Monday June 1	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday .. 2	
Wednesday .. 3	
Thursday .. 4	Motions.
Friday .. 5	} Short Causes and Unopposed Petitions previous to general Paper.
Saturday .. 6	
Monday .. 8	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday .. 9	
Wednesday .. 10	
Thursday .. 11	Motions.
Friday .. 12	} Short Causes, and Unopposed Petitions, previous to General Paper.
Saturday .. 13	
Monday .. 15	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday .. 16	
Wednesday .. 17	Motions.

Before the Master of the Rolls.

AT WESTMINSTER.

Wednesday May 27	Motions.
Thursday .. 28	Petitions in Gen. Paper.
Friday .. 29	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday .. 30	
Monday June 1	
Tuesday .. 2	
Wednesday .. 3	
Thursday .. 4	Motions.
Friday .. 5	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday .. 6	
Monday .. 8	
Tuesday .. 9	
Wednesday .. 10	
Thursday .. 11	Motions.
Friday .. 12	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday .. 13	
Monday .. 15	

Tuesday .. 16 Petitions in Gen. Paper.
 Wednesday .. 17 Motions.

AT THE ROLLS.

Thursday .. 18 { Short Causes after Swearing in the Solicitors.

Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assent.

19th May.

Barkston Ash Small Debt Court.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.
 [In Select Committee.]

For facilitating the Administration of Justice.
 [In Committee, 1st June.]

Lord Chancellor.
 For the commutation of Manorial Rights.
 [For second reading.] Lord Redesdale.

Vagrants' Removal.
 [For third reading.]

To amend the Tithes Commutation Act.
 [In Committee.]

Tavistock Small Debts Court.
 [For second reading.]

To augment the Maintenance of the poor Clergy.
 [For second reading.]

House of Commons.

To amend the Law of Copyright.
 [In Committee.] Mr. Serjt. Talfourd.

To improve the High Court of Admiralty.
 [In Committee.]

To extend the Term of Copyright in Designs of woven Fabrics.
 [In Committee.] Mr. E. Tennant.

To carry into effect the Recommendation of the Ecclesiastical Commissioners.
 [In Committee.] Lord J. Russell.

To extend Freeman and Burgesses' Right of Election.
 Mr. F. Kelly.

Drainage of Lands.
 [In Committee.] Mr. Handley.

To amend the County Constabulary Act.
 Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions.
 Mr. Mackinnon.

To consolidate and amend the Law of Sewers.
 [In Committee.]

Small Debt Courts for
 Aston, Marylebone,
 Liverpool, Wakefield Manor.

Summary Conviction of Juvenile Offenders.
 [In Committee.] Sir E. Wilmot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage.
 Mr. W. Miles.

Metropolitan Police Courts.

[For second reading.]

To abolish capital punishment in all cases except Murder.
 Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.
 [For second reading.]

For the improvement of Grammar Schools.
 [In Select Committee.]

Indemnity to Clerks of Attorneys, &c.
 [In Committee.]

Costs in Frivolous Suits.
 [In Committee.]

Rated Inhabitants Evidence.
 [In Committee.]

Tavistock Small Debt Court.
 [Passed.]

TRINITY TERM EXAMINATION.

THE Examiners have appointed Tuesday, the 9th June, for the Trinity Term Examination. The Senior Master of the Common Pleas will preside. The testimonials of service are to be left at the Law Society on Tuesday, the 2d June. The number for examination is unusually large, being upwards of 160. This increase, we think, far exceeds the demand; but the same remark applies to the other branch of the profession, and indeed to all professions.

THE EDITOR'S LETTER BOX.

THE case in the Exchequer relating to attorneys costs shall be inquired for.

The new clause in the form of affidavit for the return of probate and administration duties shall be noticed.

The letters of "Leguleius," M. J.; and A. E. F. have been received.

A Correspondent suggests the attention of the profession to the bill relating to the Law of *Sewers* now before Parliament, but he does not say in what respect he deems the bill objectionable. We gave an abstract of the bill in a former session, and are not aware of the professional interests which are further affected by the present bill.

A General Index to this work is now in preparation, and will be published soon after the completion of the present volume.

The Legal Observer.

SAURDAY, MAY 30, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE REGENCY BILL.

It has always been considered prudent, when the heir apparent has been very young, to appoint a protector, guardian, or regent, for a limited time; "but the very necessity of such extraordinary provision," says Blackstone,^a "is sufficient to demonstrate the truth of that maxim of the common law that in the king is no minority, and therefore he hath no legal guardian." In the present juncture, when it is probable that some proposition will soon be made for appointing a regent and guardian during the minority of the expected heir apparent, we propose to notice some analogous cases in which regents have been heretofore appointed.

Henry V, on his death-bed, named a regent and guardian for his infant son Henry VI, then nine months old; but the parliament altered his disposition, and appointed a protector and council, with a special limited authority. In the reign of Henry VIII, it was provided by two statutes,^b that the successor, if a male and under eighteen, or if a female and under sixteen, should be till such age in the government of his or her natural mother, if approved by the king, and such other councillors as his majesty should by will or otherwise appoint; and he accordingly appointed his sixteen executors to have the government of his son Edward VI. and the kingdom, which executors elected the Earl of Hereford protector. In the reign of George the Second, it was enacted^c that in

case the crown should descend to any of the children of Frederick, Prince of Wales, under the age of eighteen, the princess dowager should be guardian and regent until the successor attained such age, assisted by a council of regency; and in the reign of George the Third, the king, in case of a like descent to any of his children, was empowered^d to name either the queen, the princess dowager, or any descendant of King George the Second residing in the kingdom, to be guardian and regent, assisted also by a council of regency. The latest instance of appointing a regent occurred in the reign of his late majesty William the Fourth, when the present Duchess of Kent was appointed the guardian of her daughter, her present majesty, until she attained the age of eighteen; and it was declared by the same act, that the duchess should be the regent during the minority. The statute^e providing for this event was repealed in the first year of the present reign.^f

The powers given to the Duchess of Kent were limited and defined by the act constituting her regent (1 W. IV, c. 2). She was to have full power, in the name of her daughter, and under the style and title of regent, "to exercise and administer, according to the laws and constitution thereof, the regal power and government of this realm, and to use, execute, and perform all prerogatives, authorities, and acts of government which belong to the king or queen of this realm." (s. 1.) But by s. 9, she was restrained from giving the royal assent to any bill or bills of parliament for repealing or varying from the order of suc-

^a 1 Com. 248.

^b 25 Hen. VIII, c. 12, and 28 Hen. VIII, c. 7.

^c 24 Geo. II, c. 24.

^d 5 Geo. III, c. 27.

^e 1 W. IV, c. 2.

^f 1 & 2 Vict. c. 24.

cession to the crown, 12 W. III, c. 2; the act for the uniformity of public prayers, 13 & 14 Car. II, c. 4; and the act of the fifth year of Queen Anne, for securing the church of Scotland.

These precedents would seem to settle the question, if any ever existed, as to who should be appointed regent in the event of her majesty's having issue, and (which Heaven prevent) her death, leaving them under the age of eighteen. There can be no doubt, we presume, that Prince Albert would be declared guardian and regent during the minority of such heir apparent, with the same powers as were intended to be entrusted to the Duchess of Kent; and as it is possible that both of the supposed events may occur before the meeting of another Session of Parliament, we presume that they will be provided for in the course of the present Session.

PLAN OF THE PROPOSED NEW COURTS IN LINCOLN'S-INN-FIELDS.

HAVING long advocated the removal of the Courts from Westminster, and in a considerable degree prepared the way for the adoption of the measure, we rejoice that the solicitors, on behalf of their clients, the suitors, have taken up the project with the zeal and intelligence that might have been expected from men of business. We think the solicitors are the proper persons on behalf of the public to bring forward the proposal; and, as we stated last week, they are taking the proper steps for obtaining the sanction of the higher authorities. We hear that several of the Judges and leading members of the Bar have already expressed a favourable opinion of the measure.

We have had an opportunity of seeing the admirable designs of Mr. Barry for the proposed building, and have no hesitation in pronouncing them to be well adapted for the several purposes in contemplation. They have the merit also of being capable of easy modification, or of considerable addition.

For the present we shall give a general description of the edifice, and take an early opportunity of considering the details.

The length of the building is about 400 feet, and the width about 300. There are two entrance porticos for the public, at the east and west ends of the building, and two at the north and south sides for the Judges

and Barristers. Passing through these several porticos, we come to vestibules and corridors leading to the centre of the edifice, which is occupied by a public hall, 200 feet long, 80 feet wide, and 60 feet high. Around this great Hall are twelve Courts lighted from above, the eight largest being 55 feet long by 45 feet wide, and the four others 35 feet long by 25 feet wide.

Then there are Entrance Lobbies to the several Courts, opening into the Great Hall; and adjoining each Court are Barristers' Retiring Rooms; also Solicitors' Rooms attached to each Court, and Waiting Rooms for witnesses or other persons.

On the North and South sides, beyond the Private Entrance Porticos for the Judges and Barristers, are the Judges and Barristers' Entrance Hall, and Private Rooms for the Judges, with a room for the Judges' Clerks, and Ante Rooms.

At each of the four corners of the building is a Law Library for the use of the Courts. There are also Consultation Rooms and Refreshment Rooms.

Besides the several staircases communicating with the offices in the basement, and with the one pair floors, there are for the use of the Judges and Barristers private Corridors and Lobbies. Very extensive Public Corridors are likewise provided.

The basement story is intended to be vaulted and rendered fire-proof, and it is proposed to be appropriated principally for records, and to contain the Court Keepers and other officers' apartments. It may be well lighted and ventilated from the area surrounding the building. Another story is proposed above the ground floor, to be lighted entirely from within, above the top of the courts. In this story might be obtained spacious and well lighted rooms for Libraries, Commissioners, the Grand Inquest and other Juries, Public Offices, &c. &c., and ample as well as convenient access from the ground floor would be afforded.

PRACTICAL POINTS OF GENERAL INTEREST.

RESTRAINT OF TRADE.

In our fourteenth volume, p. 106, we collected the cases relating to bonds and covenants in restraint of trade; and in vol. 15, p. 211, we called attention to the important case of *Hitchcock v. Coker*, 6 Ad. & E. 438; 1 Nev. & P. 796. In a very late case the rule has

been held to be, on motion in arrest of judgment, that a bond to restrain trade, unlimited in point of space, is void, however limited the time may be in which it is to be enforced. Neither the time nor the space can be unlimited. *Hitchcock v. Coher*, *ubi. sup.* The space may be a large district of England, *Wickens v. Evans*, 3 Yo. & Jer. 318; as where an attorney was restrained from practising in London, and one hundred and fifty miles round it, the bond was held valid. *Bunn v. Guy*, 4 East, 190; but it must not be unlimited.

"The obligation," said Lord Abinger, C. B., "which the defendant undertakes by his bond, is, that he shall neither be, nor serve a coal merchant in any capacity for nine months. That goes so far beyond what the plaintiff could require, that it is an unreasonable restriction. It is against the principles and policy of the law as to any restraints on trade, and the right of every man to be at liberty to struggle for his own existence in the exercise of any lawful employment; it is beyond what is necessary for the protection of the plaintiff, or what the justice of the case demands." And Mr. Baron Parke thus discussed the point with his accustomed ability.

"A restraint prohibiting a party from carrying on trade within certain limits of space would be good, and a contract entered into for the purpose of enforcing such an agreement as that would be valid; and the limit of the space is that which, according to the trade he carries on, is necessary for the protection of the party with whom the contract is made; and all the cases cited appear to turn on the question as to the limit of space within which the restriction should extend. Now, where a limit as to space is imposed, the public, on the one hand, do not lose altogether the services of the party in the particular trade—he will carry it on in the same way elsewhere; nor within the limited space will they be deprived of the benefit of the trade being carried on, because the party with whom the contract is made will most probably within these limits exercise it himself. But when a general restriction, limited only as to time, is imposed, the public are altogether losers, for that time, of the services of the individual, and do not derive any benefit whatever in return: and looking at the authorities cited upon this subject, it does not appear that there is one clear authority in favour of a total restriction on trade, limited only as to time. The case cited from the year book, 2 Hen. 4, pl. 26, to which I before referred, and in which Mr. Justice Hall expressed himself so strongly, was a case where the restriction was that the party should not carry on the business of a dyer for half-a-year; and he held that to be clearly and absolutely void. There is, in short, no authority for the position that any absolute restriction, limited only as to time, can be imposed, except the dictum of Willes, C. J., in the case of *The*

Gunmakers' Company v. Fell, Willes, 388; but his attention was not called to any particular case of a restriction in time only, and he probably used the general language referred to with reference to these instances where the restriction was partial both as to time and place, which occurs in most of the cases. It seems to me, therefore, that there is no authority in favour of the position that there can be a general restriction, limited only as to time, and that this case falls within the rule laid down by *Tindal*, C. J. viz.: that this is a general prohibition from carrying on trade, which is more extensive than the interests of the party with whom the contract is made can possibly require. On that ground, I think the judgment ought to be arrested. *Ward v. Byrne*, 5 Mee. & W. 645.

THE STUDENT'S CORNER.

POWER COUPLED WITH INTEREST.

To the Editor of the Legal Observer.

Sir,

I beg leave to submit the following answers to the several queries put by your correspondent F, at page 406 of your last volume:

First.—That the devise by the will carried the legal fee, I think cannot be doubted; and that the power or direction to sell, would survive I also think is quite clear, supposing it were one even uncoupled with interest; for though it seems to have been well settled for a long time that a naked power, uncoupled with an interest, would not survive at law if given to two or more persons specifically named, (though it seems to be otherwise, if given generally to executors,) yet a Court of equity, would certainly enforce it, looking to the application of the money arising from the sale to be the substantial part of the devise, and the persons named to be mere trustees, bringing the case within that rule of equity, that a trust shall not fail for want of trustee.—See *Hargrave's* note 146, to *Co. Litt.* 113, a.—However, it seems to me that this is a power coupled with interest, and so would survive.

Secondly.—A will devising real estate could only (before the recent statute) be revoked by another will executed according to the Statute of Frauds, or by such a change either in the testator's situation or the nature of his estate, as the court would consider as an implied revocation, and therefore I think the first codicil was inoperative as a revocation of the appointment of M. as trustee, and of the devise to him.

Thirdly.—I think there being no words of devise, H. would have taken no estate in the realty.

Fourthly.—It seems to me quite clear that the second codicil would not have the effect of setting up the first one. Indeed the point has been settled, (see *Attorney General v. Barnes*, 2 Vern. 597,) upon the principle that what is bad at its creation, could not be made good by

anything *ex post facto*. Mr. Roberts, in his treatise on Wills, vol. 1, p. 105, says that the operation of a codicil, where it is a republication, is only to set up the will in its original state and efficacy making it as far as it was efficient in itself by the solemnities of its execution and legal compass of expression, reach to the date of the codicil, and embrace intermediate acquisitions.

Fifthly.—The devise to M. not having been effectually revoked, and supposing him still alive, I apprehend the conveyance from G. and the testator's daughter was insufficient.

Z.

PROGRESSIVE DUTIES OF BARGAINS AND SALES.

Is there a necessity for any followers or progressive duty on bargains and sales for a year? The usual plan, I know, is to use 25s. followers, but some professional men do not think it necessary, as they say the ad valorem duty covers all. The schedule to the Stamp Act says nothing about followers on these instruments.

R. S.

WARRANT OF ATTORNEY.—BANKRUPT.

Sir,

In the case of *Crosfield v. Stanley*, 4 Barn. & Ad. 87, it was decided, that the operation of the 7th section of the 1st Wm. IV. c. 7, for rendering valid as against assignees of a bankrupt judgments and executions on *cognovits* did not extend to judgments and executions on *warrants of attorney*, but I presume the latter are now placed on the same footing as the former by the 2 & 3 Vic. c. 29: what is the general opinion of the profession on this point?

A CONSTANT READER.

SELECTIONS FROM CORRESPONDENCE.

AFFIDAVIT FOR RETURN OF PROBATE DUTY, &c.

To the Editor of the Legal Observer.

Sir,

Within these last twelve months the commissioners of stamps and taxes have issued a new form of affidavit for return of probate and administration duties on the grounds of mistake and debts.

As many of your subscribers who reside in the country are not aware of the change of form in the above affidavit, and as it would be a great saving of time not only to the gentlemen of the probate duty office, but also to the profession, if this fact were generally known, I beg to call your readers' attention to the following clause, called "the Foreign Property Clause," which it is necessary should

be inserted in every affidavit on which the application for a return of duty is grounded, and the words of which I give from the printed form used at the office. "And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of the deponent's (or these deponents,) knowledge and belief."

"If the deceased did die possessed of any other property in Great Britain or elsewhere, omit the preceding clause, and state where such other property was situated, and the gross amount thereof."

The above is the only material variation from, or rather addition to the old form of affidavit.

R. G. S.

ATTORNEY'S PRIVILEGE.—COSTS.

Sir,

An attorney of the Queen's Bench is sued in a local borough court and pleads his privilege; After some time, the plaintiff not having replied or filed a *cassetur breve* the defendant rules him to reply and in due course signs judgment of *non pros* for want of a replication: the taxing officer of the court refuses to give the defendant the costs of this judgment. Is he right?

It appears to me that the defendant in this case is entitled to his costs, in the same manner as he would have been on any plea other than a plea of privilege, and that the plaintiff, to avoid payment of costs, should have filed a *cassetur breve*, which he neglected to do, or to take issue on the plea; I can find no cases containing any decision on the subject; perhaps some of your numerous readers can refer me to some authority.

W. A.

[Our correspondent should consult the new work on Costs, by Mr. Mansel, just published.

Ed.]

PRACTICE UNDER IMPRISONMENT FOR DEBT ACT.

Sir,

By the 2d section of 1st & 2d Vic. 110, it is enacted, that all personal actions in her Majesty's Superior Courts of Law at Westminster shall be commenced by writ of summons.

I recently obtained an order to arrest a foreigner, who had just arrived in this country, and issued a *capias* and summons into London, and a concurrent *capias* into Middlesex. The defendant was arrested in the latter county during the close of the offices; and before I had time to issue a Middlesex summons gave bail, and has since left the country without my being able to serve him with process. Can you inform me whether I have any remedy to proceed with my action, and whether the bail are discharged.

A SUBSCRIBER.

BARRISTER'S CALLED.

Easter Term.

LINCOLN'S INN.

James Adamson.
Kenelin Kilner.
Walter Wyndham Burrell.
Robert Williams Soady.
David Power.
Samuel James.
Phillip James Bailey.
William Dudley Ryder.
The Honourable Frederick William
Adolphus Bruce.
Honourable Edward Cecil Curzon.
William Charles Buller.
Henry Sherston Baker.
John Wickens.

INNER TEMPLE.

Gathorn Hardy.
William Buttle Walker.
Louis Charles Tennyson D'Eyncourt
Thomas Acton Warburton.
Charles Knowlly Greenside.

MIDDLE TEMPLE.

Benjamin Coulson Robinson.
George Whitely.
Wilford George Brett.
Richard Burn.
Peter Francis Debary.
Charles Andrew Reynolds.
Robert Russell.
Montagu David Scott.
Henry Edmondson.
Edward Schroder.
Alfred James Peter Lutwyche.
Cornelius Swan Scarbrow White.
Thomas Perch.
Hughes Ridgway Denton.
Henry William Cripps.
George Little.
William Gawtress.
George Stevens Allnut.
Henry James Meller.

GRAY'S INN.

Charles Garstin Sutherland.
John Courteney Bluett.
John Carr.
William Alfred Hill.
Robert Hart.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term.

Clerk's Name and Residence.

Andrews, George, the younger, 18, Chadwell
Street; Weymouth; and 23, River Street.
Allpress, Thomas Wetham, 30, Wilmington
Square; St Ives; and Myddleton Square.
Anderson, Eustace, 3, Pelham Crescent,
Brompton.
Allsop, John Freston, Bungay.

Adney, John, Winchmore Hill; and Wool
Bridge, near Wareham.
Atkins, John, Beresford, Manchester, and
Salford.
Banister, Edward, Powis Place, Southampton;
and Alton.

Bowerman, Richard, Uffculme.
Buckingham, William, 49, Bernard Street;
and Stoke.
Brooke, Horace John, 26, Thavie's Inn.
Bray, William Reginald, Plymouth.
Bourne, Henry, Burntfoot, Cumberland.
Brett, Edward, 12, Guildford Street; and
Lynn.
Bellhouse, Thomas Taylor, Wakefield.
Browne, Martin, Fakenham.
Bicknell, Samuel, 48, Manchester Street.
Bloxam, George, 40, Cadogan Place; and
New Boswell Court.
Bolton, Peter Jones, 8, Prior Place; and
Salsbury Place, Walworth.
Bryett, Theodore, Exeter.

To whom articulated and assigned.

John Henning, Weymouth; assigned to
John Pooley, 60, Lincoln's Inn Fields.
Robert Wetham Allpres, Hilton.

William Casterton, Angell Court.

Matthew Brettingham Kingsbury, Bungay;
assigned to James Taylor Margitson, Bun-
gay.

Septimus Smith, Blandford Forum; assigned
to Thomas Pearson, Essex Street.

Edward Owen, Manchester; assigned to John
Owen, Manchester.

John Richards, the younger, Reading; assign-
ed to Charles Ewens Deacon, Southamp-
ton; assigned to James Burton, 3, Powis
Place.

Richard John Marker, Uffculme.

Phillip Moysa Little, Devonport.

Zachary Brooke, 17, Featherstone Buildings.

Jonathan Luxmoore, Plymouth.

Christopher Rymer, Walsingham, Durham.

Charles Goodwin, Lynn, Norfolk.

Thomas Taylor, Wakefield.

Henry Stokes, Fakenham.

Christopher Bicknell, Manchester Street.

Richard Bloxham, New Boswell Court.

Richard Jackson, Kingston-upon-Hull; assign-
ed to William Tredway Clark, Great James
Street.

Charles Henry Turner, Exeter; and John
Browning, Exeter.

To whom attitled and assigned.

Bell, Horace James, Derby.

Bennett, Wm. Woolley Leigh, Gawcott.

Costerton, Frederick Samuel, 20, Jewin Crescent, Great Yarmouth; 24, Hyde Street, Upper Stamford Street.

Cree, Thomas, the younger, 26, Mornington Place.

Champney, Thomas Frederick, 14, Ampton Street; and York.

Calvert, Thomas, York.

Chase, Charles Frederick, 9, Featherstone Buildings; and 16, Tavistock Place.

Carpenter, Surrey Edward Samuel, 3, Wakefield Street; Truro; and 15, Everett Street.

Cowland, Henry, 5, Ampton Street; and Launceston.

Cross, Frederick, Halesworth.

Clarke, Edward Salmon, 6, Durham Place; Hackney; and 6, New Square.

Canning, George Barnes, 17, Surrey Street, and Andover.

Chellingworth, John Williams, 14, Beford Place, 21, Kenton Street; 28, Tavistock Place; 13, Burton Crescent.

Camden, Charles Taylor, 5, Allen Terrace, Kensington.

Collett, Charles, 57, Lincoln's Inn Fields.

Cann, John Stephenson, 9, Strahan Terrace, Islington; and Wymondham.

Drew, Aurelius Henry Willmot, 40, Ely Place; Tewkesbury; and 31, Dalston Terrace.

Clerk's Name and Residence.

John Bell, Craven Street; assigned to Samuel Walker, Lincoln's Inn Fields; assigned to William Eaton Mousely, Derby.
Thomas Hearne, Buckingham.
John Baker, Great Yarmouth.

Thomas Cree, Verulam Buildings.

William Gray, the younger, York.

John Brook, York.

Samuel Chase, Reading; assigned to Richard Roy, Great George Street.

George Simons, the younger, Truro.

John Lethbridge Cowland, Launceston; assigned to John Darke, Launceston.

John Crabtree, Halesworth.

Arthur Clarke, Bishopsgate Church Yard; assigned to Thomas Butts Tanqueray, Bishopsgate Church Yard.

Thomas Lamb, Andover.

Edward Richmond Nicholas, Bewedly.

Thomas France, Bedford Row.

Kinsman and Prichard, Lincoln's Inn Fields.

Edward Palmer Clark, Wymondham.

Lindsey Winterbotham, Tewkesbury.

[To be continued.]

SUPERIOR COURTS.

Vice Chancellor's Court.

WILL.—SPECIFIC GIFT OF CHATTELS.—
REMOTENESS.

A. devised his mansion house to B. for life, remainder to B.'s first and other sons in tail male, with several remainders over for life and in tail, and he bequeathed his plate and other specific chattels in and about his mansion house to trustees, to permit the same to be used and enjoyed by the person for the time being entitled in possession to the mansion house under his will, until a tenant in tail of the age of 21 should be in possession thereof, and then the plate and other specific chattels to go to him; and he gave the residue of his personal estate to such person as at his own death would be entitled beneficially in possession to the mansion house. B. being such person took the residue, and C. the eldest son of B., and born before the testator's death, having become the first tenant in tail entitled in possession to the mansion house, claimed the plate and other chattels specifically bequeathed: Held, that as a tenant in tail of the age of 21, might not be necessarily in possession of the mansion house within

the time allowed by law for the suspension of the vesting of chattel interests, the specific gift was void for remoteness, and it vested absolutely in B., but whether, as being the person beneficially entitled in possession, or as residuary legatee, quære.

This case was argued before the Vice Chancellor last summer. The points in the case may be easily understood from the judgment, which his Honor, after full consideration, delivered on the second day of last term.

The Vice Chancellor.—On the 11th of October, 1814, Sir Henry Carr Ibbotson made his will. At that time, by virtue of a settlement made on his marriage, his mansion house at Denton Park stood settled to the use of himself for life, with remainder to trustees to preserve contingent remainders, with remainder to the use of the first and other sons of the marriage, severally and successively in tail male, with remainder to the use of himself in fee. By his will he devised the reversion in fee of his mansion house to the use of his brother, Sir Charles Ibbotson for his life, with remainder to trustees to preserve contingent remainders, with remainder to the use of the first and other sons of Sir Charles Ibbotson, severally and successively in tail male, with remainder to the use of his own daughters severally and successively in tail, with several

remainders over for life and in tail, with remainder to his own right heirs. He then gave in the words following: "I give and bequeath unto Win. Charlton and Matthew Wilson, their executors, administrators, and assigns, all my plate, pictures, books, and household furniture in and about my mansion house at Denton Park, upon trust, to permit the same to be used and enjoyed by the person and persons, who, for the time being shall be entitled in possession to my said mansion house, under and by virtue of the settlement made upon my marriage or of the limitations contained in this my will, until a tenant in tail of the age of 21 years shall be in possession of my said mansion house, and then the said plate, pictures, books and household furniture are to go and belong to such tenant in tail. I give and bequeath all the rest and residue of my personal estate and effects, after payment of my just debts, funeral and testamentary expences and legacies, and subject thereto, unto the person who at my decease will be entitled beneficially in possession to my said mansion house at Denton Park, and I constitute and appoint my brother Charles Ibbotson executor of this my will." The testator afterwards made a codicil not affecting the mansion house, the specific gift, or the residuary bequest, and he died in 1825 without issue. In the same year the will was proved by Sir Charles Ibbotson, who, on the testator's death, became beneficially entitled in possession to the mansion house, and consequently was his residuary legatee. Sir Charles Ibbotson has died lately. His eldest son, the present Sir Charles Henry Ibbotson, was born before the death of the testator, (Sir H. C. Ibbotson) and has now attained the age of twenty-one years. And the question now is who became entitled to the subjects of the specific gift? The words in this case are singular, and unlike the words in any reported case. The gift is in the simple form of a declaration of trust, not requiring any settlement to be executed. It has no such qualifying words as are found in the case of *Gower v. Grosvenor*,^a and other cases, namely "as far as they can by law," or "as far as the rules of law and equity will permit." The gift referring to the limitation in the settlement and in the will of the mansion house, meant to pass the chattels in succession, but the will is so expressed, that if it were literally carried into effect, it might have happened, to use the expression of Lord Eldon in *Ware v. Polhill*,^b that no tenant in tail of the age of twenty-one years might have been in possession of the mansion house for two centuries; and consequently the absolute interest in the plate and other articles would not have vested during that time. In *Marshall v. Holloway*,^c the same great authority says, "the trust in this case for accumulation I think bad, because it may last for ages," and under the will of Sir Henry Carr Ibbotson the suspension of the vesting of the chattels might have endured for

ages. The fact that a tenant in tail of the age of twenty-one years has become possessed of the mansion house within the space of twenty-one years from the death of the testator is immaterial, for the validity of the gift must be determined by considering how it stood at the death of the testator, and unless it was such that if it ever took effect at all, it must of necessity have vested the absolute interest in some one within the period allowed by law, it was bad then and must be so now. For, as Sir W. Grant says, in *Lord Southampton v. Marquis of Hertford*,^d an executory devise exceeding the allowed limits is void *in toto*," and in *Tollemache v. Earl of Coventry*,^e Lord Brougham says, "to argue from the fact that the person was in *esse* at the date of the will, who became Lord Vere, is to rely upon an accident: the event might have been otherwise. He would not, *ex necessitate*, answer the description within the allowed period. The estate must be certain so as within the time to vest in the person described," and upon the fullest consideration, I am of opinion that so far as the gift was framed to take effect after the death of Sir Charles Ibbotson, it was void. Whether it was good as a gift, to him for life only, and void as a gift in remainder after his death; or whether it might be construed as a gift absolutely to Sir Charles Ibbotson, according to what seems to be the opinion of Lord Brougham upon the gift in Lord Vere's will to the third Lord Vere, it is not necessary to decide; because Sir C. Ibbotson was residuary legatee. Upon the whole I think that under the will of Sir Henry Carr Ibbotson, Sir Charles Ibbotson took absolutely the subjects of the specific gift.

Ibbotson v. Ibbotson.—At Westminster, April 16th, 1840.

Queen's Bench.

[Before the Four Judges.]

CHURCH RATE.—PROHIBITION.

Where the parishioners in vestry assembled, have refused to make a church rate, the churchwardens cannot of their own authority, even though the church is in want of repairs, make a rate for that purpose.

Where such a rate is made by the churchwardens alone, and a suit instituted in the ecclesiastical court to enforce it, the common law courts are bound to interfere by prohibition.

The declaration stated in substance, that the churchwardens of Braintree had summoned the vestry to make the necessary repairs of the parish church. The inhabitants had assembled in vestry on the 24 of June, according to the summons, but had refused to make a rate; and the churchwardens had then made a rate on their own authority. They had then proceeded against Mr. Burder in the Ecclesiastical Court to enforce a payment of the rate. He had pleaded the refusal of the vestry as a

^a 5 Madd. 337.
^c 2 Swanst. 480.

^b 11 Ves. 283.

^d 2 Ves. & Bea. 62.

^e 8 Bl. 566; S. C. 2 Clark & Fin. 611.

ground why that Court should not allow the libel in proof, but that Court had admitted it: and hence the application for a prohibition. The questions raised upon this prohibition were: first, whether the rate made under the circumstances stated, was a bad or a good rate; and secondly, whether this Court had authority to prohibit the Ecclesiastical Court from proceeding further in the discussion of the validity of the rate.

Mr. *Turner* for the defendants in prohibition.—The circumstances here amount to a contumacious refusal to make the rate, and churchwardens were therefore empowered to make it. The questions raised by this declaration and demurrer are: whether the church rate is valid, and whether this Court has jurisdiction to interpose in a matter of this sort. It may be convenient in the first instance to discuss the latter question. This case properly belongs to the jurisdiction of the Ecclesiastical Court,^a and has done so since the statute *de circumspicte agatis*. This Court may interfere with the Ecclesiastical Court where the question is on a custom. There is no such question here, nor a question of prescription or modus, or the construction of a statute; otherwise, it is admitted that the jurisdiction of this Court would attach, *Blackett v. Blizzard*,^b *Byerley v. Windus*,^c *Darby v. Cosins*,^d *Paxton v. Knight*,^e *Full v. Hutchins*.^f The question in this case is a simple matter of Ecclesiastical jurisdiction, and there is nothing which brings that jurisdiction into collision with the temporal courts. If so, their having jurisdiction, it must be presumed that the Ecclesiastical Court will do its duty, *Es parte Farmer*.^g It is clear that the rate is good, for the making of a rate for the needful reparation of the church (and there is no doubt here that the reparations were needful) is a duty of the churchwardens. *The King v. St. Mary's Lambeth*,^h *Jeffrey's case*,ⁱ *Puget v. Crompton*,^k *Starkey v. Barton*,^l *Buck v. Hampneth*,^m and *Anonymous*,ⁿ in the last of which it was held, that where the Ecclesiastical Court has cognizance of the case, though the proceedings may be irregular, they will not be examinable in this Court. That doctrine has been since upheld in a great many cases. This case is now only advancing to judgment, and the Common Law Court must wait till judgment is pronounced, and error will be a ground for a prohibition, if error is then discovered. The subject-matter

of the rate being the repairs of the church, made the rate itself legal, for the churchwardens are bound to repair the church. *Prideaux*,^o *Digges*,^p and *Burn*,^q all agree in supporting the duty and liability of the churchwardens in respect of the repairs of the church. *Prideaux*, one of the highest possible authorities, says,^r of churchwardens: "They are fully empowered to perform this duty both by the appointment to office by the parish, and by the authority of the ordinary, so that they need not take the consent or advice of either, but are themselves sole judges, as representing both the ordinary and the parish, of what is needful to be done therein; however, it is advisable for the contentment of the parish that they should not enter into great repairs without first taking the sense of their neighbours. But if they will do so without such advice, they have by virtue of their office, full power and authority so to do; and if they are indiscreet enough to make a church rate where none is required, yet, if they have truly laid out the money, they must be reimbursed therein. Fraud and deceit would be against them, but if only indiscretion can be urged, they will not suffer, for the parish should have chosen wiser men for the office." These are the expressions of *Prideaux*, and that great writer then draws a distinction between repairing a church, and new building it, and states that in the latter, but not in the former case, the churchwardens must have the consent of the parishioners. That last expression proves that in the former case the consent of the parishioners is not necessary. That doctrine is supported by two anonymous cases.^s Lord *Stowell* in *Maynard v. Brand*,^t distinctly recognises this duty of the churchwardens as imperative upon them, but cautions them to make a rate previously, not because he doubts of their power to make a rate for such a necessary work, but because if made retrospectively, it would on that account be bad at law. Here a meeting of the inhabitants was duly summoned, and a majority of the inhabitants present at the meeting contumaciously refused to make a rate. It is clear that if all the inhabitants had stayed away from the meeting, the churchwardens might have made the rate in their absence. There is no difference between neglect in absentsing themselves, and contumaciousness in refusing to make the rate; and as it is the unqualified, and indisputable duty of the churchwardens to attend to the repairs of the church, the rate now made must be considered as made on a lawful occasion, and in a lawful purpose. *Gandern v. Selby*,^v and there must be judgment for the defendants.

The *Attorney General*, *contra*.—It is admitted for the plaintiff that the prohibition cannot be sustained if the rate is good. The arguments

^a 2 Inst. 602, *Articuli Cleri*; *Reg v. St. Peters Thetford*, 5 Term Rep. 364.

^b 9 Barn. & Cres. 851.

^c 7 Dowl. & Ryl. 561.; 5 Barn. & Cres. 1.

^d 1 Term Rep. 552.

^e 1 Burr. 314.; S. C. 2 Lord Ken. 14.

^f Cowper, 442.

^g 15 L. O. 268; S. C. *nom Chesterton v. Farmer*, 7 Ad. & El. 713.

^h 3 Barn & Ad. 651.

ⁱ 5 Rep. 67.

^k Cro. Eliz 659.

^l Noy. 127.

^m March's *Rep.* pl. 152, p. 92.

¹ *Yelv.* 172.

^o Directions to Churchwardens.

^p Parson's Councillor.

^q Ecc. Law, tit. Church, s. 9, p. 354.

^r Duties of Churchwardens, 10 ed. p. 37.

^s 1 Mod. 79; 1 Ventr 367. ^t 3 Phil. 501.

^v M.S. decided by Sir W. Wynne, in 1799.

used on the other side to shew that the rate is good when made by the churchwardens without the assent of the parishioners, go to shew that it would be so if made under the same circumstances by the bishop or rector. Similar arguments would give the Crown the power to tax the people if the Parliament refused the supplies. There was no such power given to parish officers in the times of popery, nor at the reformation, and yet at both periods the powers of these officers were the subject of discussion. There was a case in the time of Edward 3,^u in which a prohibition was moved for in a case like this, and was granted because the rate which the Ecclesiastical Court was moved to enforce had been made by the churchwardens without the assent of the parishioners. So far therefore as the granting of a prohibition goes, there is a direct authority against the right of the churchwardens to make a rate of this kind. Then, as to Lord Stowell's opinion: the case cited as decided by him does not go to this point, but in a work which he was accustomed to cite with the greatest respect, (Ayliff's book,) ^v though it is said that the churchwardens ought to summon the parishioners before the Ecclesiastical Court if they refuse to make a rate, there is not the least assertion of the power now contended for as existing in the churchwardens; but, on the contrary, Ayliff expressly says: "But the churchwardens cannot of themselves impose a tax for the repairs of the church, but the greater part of the parish may make a law for that purpose." The same rule is laid down by Gibson,^w and by Prideaux,^x and in Burn^y there is a form of assessment given which distinctly shews that the rate cannot be made by the churchwardens alone. Fitzherbert^z is to the same effect. In *Cockburn v. Harvey*,^a Lord Tenterden clearly adopted this view of the law; for in giving the judgment of the Court in that case he said: ^b "Rates for the repairs of churches in parishes, by the common law, are to be made by the churchwardens and the vestry, that is, by the churchwardens and inhabitants in vestry assembled," and that case decided that a rate made even by a select vestry was bad, because such a vestry could only hold the powers of a general vestry by the express words of a statute. It may be admitted that where the parishioners are duly summoned and do not attend, the churchwardens may make the rate, but that is because they themselves will then form the majority of the parishioners present, and the absentees are of course bound by the decision of those who do attend. But that does not shew that where a majority has refused to make a rate, the churchwardens can make it in their despite. *Gandern v. Selby* is of no authority in this case—

it is the decision of an Ecclesiastical Court as to the extent of its own jurisdiction, and Dr. Lushington himself, in pronouncing judgment in the present case, said of it, "It is a case which, when it comes to be examined with accuracy, seems with great eccentricities, to use no stronger term." The churchwarden is only liable if he does not do his best to get a rate, but not if that rate is refused him, nor is he in the latter case entitled, of his own authority, to impose it. In Comyns' Digest^d it is said, "If the major part of the parish at a vestry agrees to make repairs, the others are bound. But a rate made only by the churchwardens is not sufficient." In the case of *The King v. St. Peters Thetford*,^e a mandamus to the churchwardens was refused expressly on the ground that they alone had no authority to make a rate. The anonymous case,^f does not shew that they possess any such authority. In the anonymous cases^g such an authority is asserted, but the reason given does not support the dictum, and after all it is a mere hasty expression of the Court on granting a rule to shew cause. In early times the churchwardens, possessed no such authority, and Archbishop Cranmer proposed that "if the means of the church are not sufficient for the repairs of the church, it shall be lawful for the churchwardens with the consent of four of the more grave parishioners, chosen by them for that purpose, to impose a tax on the parishioners for the repair, according to the rate of their ability." That proposition did not become law, but it would have been wholly unnecessary to be made if the law was as it is now contended to be. The Ecclesiastical Court has exceeded its jurisdiction here in attempting to enforce a rate which is clearly invalid, and judgment must be given for the plaintiff in prohibition.

Mr. Turner, in reply.—Even if the rate is bad, which is denied, the question of rate is altogether one of Ecclesiastical jurisdiction. The case quoted from the times of Edw. 3 was as to the existence of a particular custom, and the cases where prohibitions have issued on demands for church rates have been where the rates have been made without any attempt first to get the parishioners to make them, or they were unnecessary. Neither of those objections exists here, and the rate is good, and must be enforced.

[The judgment of Lord C. J. Denman in this case will be given in our next.]

Common Pleas.

CONSTRUCTION OF PARTICULARS.

The defendant brought an action to recover damages for certain goods damaged, and certain goods not returned, which had been deposited with the defendant to be taken care of. The particulars gave two lists of articles,—some damaged, others not returned: Held, that articles of glass,

^u 4 Ed. 3, p. 18, pl. 13.

^v *Parergon Juris Canonici Anglicani*.

^w Codex, 120.

^x Duty of Churchwardens, 77.

^y Eccles. Law, tit. Church, s. 9, p. 353.

^z Nat. Brev., 116.

^a 2 Barn. & Ad. 797.

^b *id.* 799.

^c Decided by Sir. W. Wynne, 1799.

^d *Eglise*, G. 2.

^e 5 Term Rep. 364.

^f 1 Mod. 79.

^g 1 Vent. 367.

which were broken, the fragments being restored, did not come within the latter description.

Telford, Serjt., moved to set aside the verdict in this cause, and for a new trial, on the ground of the improper exclusion of evidence, and of misdirection on the part of the learned Judge. It was an action brought by the plaintiff to recover damages from the defendant, who was the proprietor of the Pantech-nicon, for not having taken proper care of certain furniture committed to his custody, and for not having returned certain articles which had been handed to him. The action was in *assumpsit*, and the pleas denied the breaches of the contract alleged. The plaintiff had delivered particulars, which contained lists of articles, under two heads; one list being of articles damaged, and the other of articles not returned. Among the latter were certain articles of glass. The cause was tried before *Erskine*, J., at Westminster, and the plaintiff proposed to give evidence of the contents of a crate, which had contained glasses, decanters, &c., and which was included in the second list in the particulars. It appeared, however, that the crate had been returned, but that the contents were broken. The learned Judge thereupon refused to receive the evidence proposed, the glass being damaged only, and not wholly detained, and directed the jury to leave those articles out of consideration. It was urged that the glasses, &c. being broken, ceased to be such articles as they were described to be, and that they were in fact within the second list in the particulars. The plaintiff was therefore entitled to prove them within the description given of them.

Tindal, C. J.—The declaration contains two breaches, one for not returning certain articles, the other for not taking care of certain other articles. The particulars adopt these positions, and give two sets of articles,—one not returned, and one not taken care of. It would be granting permission to mislead the defendant, if the principle upon which this motion is founded were allowed to prevail.

Bosanquet, J.—I am quite of the same opinion.

The rest of the Court concurred.—*Moss v. Smith*, E. T. 1840. C. P.

Exchequer of Pleas.

PARTICULARS.—PLEA OF PAYMENT.—BALANCE OF ACCOUNT.

Where a plaintiff has, before action brought, delivered the particulars of his demand, and afterwards in his particulars delivered with his declaration, he states that he seeks to recover a certain balance, and refers to the previous particulars, the case is not within the rule of 1 Vict. T. T.

This was an action for work and labour, &c. to which the defendant pleaded the general issue. The bill of particulars was as follows:—

“This action is brought to recover the sum of

77l. 4s. 11d., for work and labour, also for goods sold, the full particulars whereof exceed three folios, and have been already delivered.” The bill alluded to had been delivered before action brought, and stated, that the plaintiff intended to seek to recover 77l., the balance of 123l., and acknowledged receipts by cash at various periods, amounting together to 46l. At the trial, the plaintiff put in his bill for 123l., but the jury negatived all the items except as to a sum of 59l. 7s., for which amount they found for the plaintiff.

Croder now moved to reduce the verdict to 13l. 7s., on the ground that the plaintiff, having in his particulars given credit for 46l., the utmost he was now entitled to recover was the difference between that sum and the value of the work found by the jury to have been performed. The R. G. T. T. 1 Vict. provides, that, “in any case in which the plaintiff (in order to avoid the expenses of a plea of payment) shall have given credit in the particulars of his demand for any sum or sums of money therein admitted to have been paid to the plaintiff, it shall not be necessary for the defendant to plead the payment of such sum or sums of money.”

Parke, B.—The present case does not fall within that rule, which goes on to state, that “it is not to apply to cases where the plaintiff, after stating the amount of his demand, states that he seeks to recover a certain balance, without giving credit for any particular sum or sums.” Now, in these particulars, the demand is for 77l. 4s. 11d., generally, without giving credit for any thing specific. Nor is this altered by the reference made to the former particulars; for in order to bring a case within the rule, it is necessary that the admission has been made with the view of preventing the necessity of putting a plea of payment on the record, which cannot of course apply to particulars delivered before any action was brought at all.

Alderson, B.—The reason for referring to the account delivered before action brought, was probably to prevent an order for better particulars being made with costs.

Rule refused. *Bosley v. Moure*, E. T. 1840. Exch.

CAUSE LISTS, TRINITY TERM, 1840.

Queen's Bench.

NEW TRIALS

Remaining undetermined at the end of Easter Term, 1840.

Michaelmas Term, 1838.

Gloucester—Luxton, assignee, &c. v. Guppy
Lancaster—Leadbeater v. Hart
Cumberland—The Queen v. The Inhabitants of Maryport
Northumberland—Doe on the several demises of Nicholson v. Welford
Somerset—Fox, administrator, &c. v. Waters and another, executors, &c.
Carnarvon—Doe on the demise of Wynne, Esq. v. Parry, clerk, and others

Carmarthen—Evans v. Rees, Esq.

County of Bo- } Davies v. Stacey & an. (in re-
rough of } plevin.
Carmarthen }

Hilary Term, 1839.

Middlesex—The Queen v. Sarah Virrier

„ Sims, administratrix, &c. v. Thomas, Esq., M. P.

„ Ladd v. Thomas and an.

Middlesex—Smyth v. Boards

London—Poole v. Crowder and an.

„ Geary v. Harvey, Esq. M. P.

„ The Birmingham, Bristol, and Thames Junction Railway Company v. Locke

„ Hey v. Wyche

„ Lady Tufton and an. v. Whitmore & an.

„ Baker v. Baker

„ Sadler and others v. Whitmore and others

„ Bracey v. Carter

„ Abrahams v. Skinner

„ Hart v. Crowley

Easter Term, 1839.

Middlesex—Edan v. Dudfield

„ The Aylesbury Railway Company v. Thompson

„ Delisser v. Towne

„ Lynch, an infant v. Nurdin

„ Hawkins v. Paxton

„ Doe dem. of Ive v. Scott and another

„ Milligan v. Wedge

„ Bennett, exor. &c. v. Burton, clerk

London—Boorman and others v. Brown

„ Rogers v. Custance

„ Enys v. Bennetts and others

„ Bult and others v. Morrell and others

Lincoln—Doe d. of Long and others, Churchwardens, &c. v. Chapter of Peterborough

Leicester—Knight v. Mc Donall and others

Northampton—Doe d. Norton & others v. Webster

Nottingham—Williams, wo. extrix, &c. v. Fosbrooke

Sussex—Adnam v. Thomson

„ Boyce v. Ogle

Essex—Taylor v. Henniker, Bart. (case)

„ Same v. Same (trespass)

„ White v. Cutts

Hertford—White v. Donald

Gloucester—Doe d. Allen v. Allen and another

„ Hoare v. Scott

Salop—Smith v. Stanley

„ Lead v. Summers

Monmouth—Doe d. Thomas v. Beynon

Chester—The Mayor, Alderman, and Burgesses of the City of Chester v. Peers

„ Bunting v. Barlow

Radnor—Doe d. Crowther v. Drew

Carmarthen—Jones v. Downman

Cardigan—Jones v. Jones (in replevin)

Flint—Adams v. Jones

Norfolk—King v. Burrell

„ Rix v. Borton, clerk, and another

Cambridge—Mitchell v. Foster

„ Doe several demises of Thomson and others v. Aney

Bedford—Smith, wo. v. Smith

Suffolk—Doe dem. Garrod v. Olley and another

Bucks—Doe d. Farmer the elder v. Howe

Lancaster—Haigh and another v. Brooks

„ Bayley, Gent., one, &c. v. Ashton

„ The Queen v. Sharp

„ Ridgway & others v. Ewbank & another

York—Tomlin v. Bowkall

„ Lockwood, clerk, v. Wood

„ Same v. Lund

„ Culverson v. Melton

„ Bentham v. Martindale

„ The Queen v. Stamper and another

Northumberland—Stephenson v. Stainthorpe & an.

Town and County of Newcastle—Gibson v. Kirk

Cumberland—Martindale v. Smith

Cornwall—Powning v. Leach and another

Somerset—The Queen v. Walter Irvine

Trinity Term, 1839

Middlesex—Dixon v. Thompson

„ Banks v. Rough, sued, &c.

„ Nathan v. Irwin

York—Bacon v. Smith and another, assignees, &c.

Michaelmas Term, 1839.

Middlesex—Poole v. Sedden and another

„ Stapleton v. Harper

„ Doe d. Lyster and others v. Goldwin

„ Lewis v. Reilly and another

„ Lane v. Mullins

„ Wilcoxon v. Walker

„ Meredith and another v. Simmons

London—Sliffield, executrix v. Rivolta

„ Hankey and others, assignees, &c. v. Cobb

Essex—Chaney v. Payne

„ Birmingham, Bristol, and Thames Junction Railway Company v. Holford

Kent—Abington, Esq. v. Lipscomb

Surrey—Doe d. Angell v. Angell

„ Doe d. Angell v. Angell (Barham, tenant)

„ Gillon v. Watt

Lincoln—Carrett v. Morley and others

„ Same v. Same

„ Bonner, clerk v. Prest

„ Beadsworth v. Torkington

Leicester—Doe d. Sturges v. Ward and others

„ Fosbrooke v. Fosbrooke

Berks—Lock v. Sellwood

„ Sellwood v. Mount and others

„ Green v. Neale and another, since deceased, sued with, &c.

Gloucester—Wintle v. Freeman

„ Same v. Same

Oxford—Doe d. Cozens v. Cozens

Devon—Bickford and others v. Skews

„ Webber v. Richards

„ Neck, executor, &c. v. Smart

Hants—Doe d. Fleming, Esq. v. Srook and another

Cambridge—The Queen v. Brown, clerk, & an.

Pembroke—Baron de Rutzen and Wife v. Farr

Cardigan—Doe d. Davies v. Davies

Carmarthen—Lang and others, surviving executrix and executor, &c. v. Neyil and another

Westmoreland—Fisher, clerk v. Birrell and anor.

Northumberland—The Queen v. Warkman, clerk

„ Brunton and others v. Hall

„ Nixon v. Nanney, Esq.

Lancaster—Smith v. Burdekin

„ Richardson v. Dunn

„ Fielden v. Seddon and others

Lancaster—The Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London v. Greenough

„ Green and others v. Smithies

Hilary Term, 1840.

Middlesex—Mason v. Paynter, Esq.

„ Baker v. Woollams and another

„ Blagg v. Aston

„ Scott v. Parker

„ Hickey v. Edgington

„ Connelly v. Holt

„ Curlewis v. Corfield

London—The Queen of Portugal v. Rothschild
and others
,, Niven and another v. Devaux and anor.
,, The London Grand Junction Railway
Company v. Gunston
,, Same v. Graham, M. D.
,, Wheeler v. Montiflore and others
,, Thompson v. Stuart
,, Ward v. Law, one of the public officers,
&c.

Easter Term, 1840.

Middlesex—Claridge v. Latrade
,, Same v. Same
,, Roxburgh v. Devon, Esq.
,, Impett v. Phillips
,, Snagg v. Greme, sued with Lamb
,, Bell v. Mantle
,, Carpenter v. Wall, a prisoner
,, Lane and others v. Burghart
,, Kelly v. Curlewis
,, Bingham v. Stanley
,, Foxcroft v. West
London—Ellwand v. Melville
,, Same v. Same
,, Collard and anor. v. Allison and anor.
,, Hackwood, who has survived, &c. v.
Somes
,, Benson v. Blunt

Leicester—Hopley v. Crockett, clerk
Warwick—Doe d. Earl of Abergavenny v. Hawken
Northampton—Davies v. Thompson
Sussex—Beale v. Holmes

,, Candle v. Seymour, Esq.
Surrey—Cantwell v. Saunders
,, Darby v. Harris and others
,, Horoby v. Coulton

Gloucester—Slatter v. Oakley
,, Davies v. Black, clerk
Berks—Doe d. Ewer v. Willis
,, Eblett v. Haslam
Stafford—Doe d. Elwell, assignee, &c. v. Hordern
and another

Worcester—Aston v. Gandon
Chester—Filton v. Hammersley
Denbigh—Jones v. Overton

Radnor—Lewis v. Meredith and others (*in replevin*)
York—The Manchester and Leeds Railway Com-
pany v. Fawcett

Norfolk—Browne v. Clarke, sued, &c.
,, Sheppard v. Dry and Everitt

Bucks—Champion v. Griffiths
Bucks—Champion v. Griffiths

,, Clayton, Bart. v. Corby
Devon—The Hon. N. Fellowes v. Clay

,, Same v. Same
,, Doe d. Williams, Bart. v. Nanceheville
,, Green v. Eales
,, Doe d. Earl of Egremont v. Hellings
,, Same v. Same

,, Ramsey, the younger, and anor. v. Beaver
Somerset—Andrews and another, administrators,
&c. v. Goodfellow and another

,, Pharazin v. Johnson
,, Padfield v. Tapp
,, Doe d. Avery v. Avery
,, Doe d. Earl of Egremont v. Date & an.
,, Same v. Williams and another
,, Same v. Stockham
,, Same v. Bellamy
,, Same v. Pulman and others
,, Same v. Warden and another
,, Same v. Gould and others

Hants—The Queen v. Buckley
Dorset—Smith v. Chambers & ors., assecs., &c.

COURT IN BANCO.

PEREMPTORY RULES for Trinity Term, 1840.

First Day.

Wilton, Gent., one, &c. v. Chambers
Atkinson, Esq., v. Jones, widow, executrix
Same v. Same
Knight v. M'Douall and others, *in replevin*
Same v. Same, *ditto*
Evans v. Okell
The Queen v. Justices of Middlesex, *Hingham apd.*
The Queen v. Inhabitants of Barnard Castle
The Queen v. Leicestershire and Northampton
Union Canal Company
The Queen v. Justices of the Cinque Ports
Fenton v. Dimes
The Queen v. Justices of west riding of Yorkshire
In the matter of arbitration between Alex. Bower
and others
Rawlinson's executors and Watson's executors.
South Eastern Railway Company v. Hebblewhite
Same v. Barnes
The Queen v. Mayor of Ludlow
Wilton v. Chambers
Evans v. Reeves, otherwise, &c.
The Queen v. Trustees of Dewsbury Roads
The Queen v. Archibald Prentice and another
The Queen v. George Quayle
The Queen v. Henry Rumsey Williams
Elliott v. Kendrick
South Eastern Railway Company v. Troughear
Same v. Wright
Same v. Hamer
Same v. Banner
The Eastern Counties Railway Company v. Cooke
Same v. Fairclough

Second Day.

The Master, Wardens, &c. of Apothecaries of
London v. Harrison
The Queen v. Inhabitants of Barton
The Queen v. Southend Pier Company
The Queen v. Theobald O'Dbherty
In the matter of an *habeas corpus* for John Easton,
a smuggler
The Queen v. James Stewart, overseers of Saint
George, Hanover Square.
Dyke and another v. Richards

Third Day.

The Queen v. Justices of Wilts
The Queen v. The Victoria Park Company
The Queen v. The Midland Counties Railway Co.
The Queen v. The Eastern Counties Railway Co.,
ex parte Mary Price and others
The Queen v. Same, (*ex parte* Collingridge)
The Queen v. Commissioners of Brighton Inclosure
{ The Queen v. Dennett
{ Colley, (appellant) v. The Mayor, Aldermen, and
Burgesses of the Borough of Gravesend, (re-
spondents)

Fourth Day.

The Queen v. Dean, &c. of Exeter
The Queen v. The Scriveners' Company
Bosanquet & ors. v. Ransford, public officer, &c.
Doe d. Rees v. Howell

BAIL COURT.

PEREMPTORY RULES for Trinity Term, 1840.

First Day.

The Queen v. The Justices of Herefordshire
Archer v. Kearse
Mitchell v. Law
Herring v. Dorrell and another
Turner v. Harman
Same v. Same
Gray, administrator, v. Leaf, executor, &c.
In the matter of Wm. Jardine and another

{ In re Attwood, Gent., one, &c. }
 { Ex parte Holloway, Esq. & anor. }

Doe d. Pitcher v. Roe

Same v. Same

In the matter of Robert Ward, gent., one, &c.

Webster and another v. Mason

The Queen v. Lord of the Manor of Bishop's Stoke

The Queen v. Lord of the Manor of Ingledon

Second Day.

Hobson v. Wadsworth, sued, &c.

Thorpe v. Burgess

Hooper v. Lewis and Wife

Nye and another v. Thompson

{ Coull v. Hall and another }

{ Coull & anor., exors., &c. v. Hall & anor. }

In the matter of George Higham, gent., & anor.

Leman v. Lewis

Jackson v. Robinson

Sharp v. D'Almaine

Third Day.

Jordan and another v. Chowns

William Armstone v. J. B. Judkins

Schaaffhausen and another v. Birtles

Harvey v. O'Meara, Esq.

Pease and others v. Wells

Lawler v. Clements and another

The Queen v. Aldermen of Malmesbury

The Queen v. Justices of Berks

The Queen v. Justices of Leicestershire

SPECIAL PAPER.

Trinity Term, 1840.

Marked * are special cases; † special verdicts;
 the rest are demurrers.

* Archbishop of York & others v. Trafford & ors.

Hasleden and another v. Almond

Strachan, assignee v. Thomas, Esq.

Bowler v. Nicholson

Dayrill v. Hoare and others

Scott v. Same

Tidd v. Foskett

Bernhard v. Warwick

* Doe d. Lean v. Lean and others

Price and Wife v. Rolt and Wife

Field v. Adames and others

Fisher v. Ford

Ford v. Lefevre

* Bennett, executor v. Burton

* Chancellor of the University of Oxford and the
 Mayor, &c. of the City of Oxford v. Cook

Hewett v. Hewett

* Andrews v. Marris and another

Smith v. Kean

Hunt and another, assignee v. Robins

Jobling v. Brown

Danby v. Hope

* Steavenson v. Mayor, &c. of Berwick-upon-
 Tweed

† Saunders and others v. Vanzeller

Hughes v. Done

Simpkins v. Williams

Williams v. Astley, Bart.

* Doe several demises of Jones & ors. v. Pearse

Stocks v. Roberts and others, *in replevin*

Greatorox v. Brook

* Hunt v. Burnell, Esq.

Plumbe and Wife v. Bould

Purchell v. Salter

Williams, gent. v. Jones, gent.

Humphery, Esq. v. Fenninge

Same v. Same

Battock and another v. Hume

The Birmingham and Gloucester Railway Com-
 pany v. Thomas Hampson

Whitaker v. Lloyd

Marshall v. Adams

Barton and others, executors, &c. v. Holman

* Rolton and others v. Inglis and others

Marshall, clerk to trustees v. Adams

Bell v. Twentyman

Faithful and another v. Ashley

Crompton v. Wakley

Clarke and another v. Williams and another

Elverd v. Foster and another

Harvey v. Knocker

Hallack v. The University of Cambridge, *in pro-
 hibition*

CROWN PAPER.

Trinity Term, 1840.

Wednesday, June 3.

Carmarthenshire—The Queen v. Stephen Jones

Durham—The Queen v. John Marquis

Lancashire—The Queen v. Churchwardens of Man-
 chester

Durham—The Queen v. Inhabitants of Middleton-
 in-Teesdale.

Bridgwater—The Queen v. Matthew Paramore

Yorkshire—The Queen v. Inhabitants of Raven-
 stonddale

Notts—The Queen v. George Kelk

London—The Queen v. Thomas Wilson—Church
 Rate

„ The Queen v. Same—Poor Rate

Yorkshire—The Queen v. Inhabitants of Darton

Surrey—The Queen v. John Hunt

Cambridgeshire—The Queen v. Richard Eaton and
 another, justices, &c.

England—The Queen v. Eastern Counties Railway
 Company

Durham—The Queen v. James Colbeck and ors.

Cheshire—The Queen v. William Axon

Lancashire—The Queen v. Richard Gould

„ The Queen v. Thomas Hardcastle

Merionethshire—The Queen v. Richard Thomas

Cambridge—The Queen v. Mayor &c. of Cambridge

Warwickshire—The Queen v. Inhabitants of Fenny
 Compton

Ipswich—The Queen v. Inhabitants of St. Clement

Dorset—The Queen v. Trustees of Harnham Roads

Yorkshire—The Queen v. Inhabitants of Malsonby.

Middlesex—The Queen v. James Bolton

Berks—The Queen v. Justices of Roads from
 Henley Bridge to Maidenhead

Norfolk—The Queen v. Inhabitants of East Wurch

Surrey—The Queen v. Steward of Richmond Manor

Northumberland—The Queen v. Inhabitants of
 Newburn

Durham—The Queen v. Anthony Todd and ors.

Lancashire—The Queen v. Inhabitants of Preston
 2 causes

Notts—The Queen v. William Robinson

Middlesex—The Queen v. Inhabitants of Kensington

Cheshire—The Queen v. Inhabitants of Hurdsfield

Derbyshire—The Queen v. Inhabitants of the
 County

Northamptonshire—The Queen v. Inhabitants of
 Werrington

Cheshire—The Queen v. Inhabitants of Marple

Lincolnshire—The Queen v. John Denby

Essex—The Queen v. Guardians of Braintree Union

Lancashire—The Queen v. John Poole and anor.

Lincolnshire—The Queen v. Commissioners of Bos-
 ton Court of Requests and Thomas
 Hopkins

Bristol—The Queen v. The Bristol Dock Company

Northumberland—The Queen v. Inhabitants of
 All Saints

Somersetshire—The Queen v. Inhabitants of Bridg-
 water

Yorkshire—The Queen v. George Shepherd
 " The Queen v. Joseph Holdsworth and another
 Surrey—The Queen v. Lady of the Manor of Ham
 Derbyshire—The Queen v. North Midland Railway Company

Common Pleas.

REMANET PAPER FOR TRINITY TERM.

Enlarged Rules.

To 1st day—Lindsay v. Wells
 " Medley & ors. v. Pritchard & anor.
 2d day—Faulkner v. Whittall—*See New Trial*
List for this day
 3d day—Ball v. Ross
 " Morgan and another v. Miller
 " Davies v. Lowndes
 " Fisk v. Wyard
 4th day—Vaughton v. Brine and others
 5th Bell, public officer v. Humphreys
 6th In re matter of Sarah Inman, ex parte William Tucker
 " Doe (Christopher) v. Roe
 To 1st day of next } Woolcott v. Clode
 Michaelmas Term } Clare v. Blackley
 generally.

NEW TRIALS OF HILARY TERM, 1839.

London—Edwards and others v. Scott and another
 " Fergusson & ors asses. v. Spencer & an.
 " Magnay v. Knight
 " Brandon v. Smith
 " Hoy v. Bush

NEW TRIALS OF EASTER TERM, 1839.

Middlesex—Stewart v. Crump
 " Mallins v. Freeman, *settled*
 " Doe (Goodbody & ors) v. Freeman, *do.*
 " Wilson v. Lewis
 " Woollaston and others v. Hakewell
 " Archer v. English and another
 " Ritchie v. Wilson
 " Tyrrell v. Woolley
 London—Norris and another v. Stamp
 " Lamburn v. Cruden
 " Abbott v. Hendricks
 Chester—Fernley v. Worthington
 Merionethshire—Probyn v. Edwards

NEW TRIALS OF TRINITY TERM LAST.

London—Hope v. West

NEW TRIALS OF MICHAELMAS TERM LAST.

Middlesex—Harris v. Goodwyn, administratrix
 " Fisher v. Dewick and another
 London—Startup v. Macdonald
 " Smith v. Brandram
 " Franklin v. Spencer
 " Glynn v. Houston
 " Figging, jun. and another v. Earl Brooke and Earl Warwick
 " Evans v. Hills
 Fixed for 2d day } Southampton Dock Company
 of this Term. } v. Richards
 Surrey—Grand Surrey Canal Company v. Hall
 " Ibbotson v. O'Brien
 Bristol—Philpotts and others v. Procter and an.
 Devon—Rees and another, assignees v. May
 Suffolk—Roberts v. Snell
 Oxon—Harrison v. Ferne
 Monmouth—Maund v. Stonehouse and others
 Worcestershire—Baylis v. Strickland and others

Pembroke—Doe (Howell) v. Thomas
 Radnor—Doe (Williams and others) v. Lloyd

NEW TRIALS OF HILARY TERM LAST.

Middlesex—Nunn v. Johnson and others
 " Bartholomew v. Carter
 " Davey and another v. Phelps
 London—Deacon and others v. Stodhart and ors.
 " Same v. Same
 " Lees v. Berry
 " Chisman and another v. Count and anor.
 " Brown v. Edgington
 " Wilmshurst v. Bowker
 " Gillett and another v. Chapman
 Fixed for 2d day } Southampton Dock Company
 of this Term. } v. Arnett
 Ditto Same v. Smith

NEW TRIALS OF EASTER TERM LAST.

Middlesex—Crane v. Price and others
 " Bethell v. Blencowe
 " Atherstone v. Bostock
 " Soanes v. Carroll Knight and others
 " Filmer v. Burnby
 " Rudd v. Scott
 " Smith and others v. Maton
 London—Groom v. Bluck
 " Ford v. Yates
 " Smith v. Knowelden
 " Richards and another v. Hayward
 " London and Brighton Railway Company v. Fairclough
 " Crossdaile v. Squires
 Northampton—Marriott v. Stanley
 Notts—Brownlow v. Tomlinson and others
 " Same v. Same
 Warwick—Robertson v. Sheward and another
 Derby—Corden v. Watkin
 Wilts—Lucas v. Beach, Bart.
 Somerset—Matthews v. Hassall
 " Same v. Same
 Lancashire—Branker and anor. asses. v. Molyneux
 Chester—Taylor and others v. Parry and others
 Carmarthen—Thomas v. Harries and others
 Sussex—Doe (White) v. Osborn
 Essex—Porter and another assignees v. Walker
 Berks—Doe (Butcher) v. Musgrave
 Worcester—France and another v. White and ors.
 " Winnall v. Broad
 London—Gear v. Goldney, *suspended*
Cwr. ad Vult.

Bonzi v. Stewart
 Same v. Same
 Earl Macclesfield v. Blackburne
 Same v. Same
 Morrell v. Martin
 Beckett v. Wood
 Luckin v. Simpson
 Brook and others, assignees v. Mitchell and others
 Doe (Cape and others) v. Walker
 Newton and ux. v. Harland and another
 Attwood v. Taylor and others
 Same v. Same
 Gould and others v. Oliver

DEMURRER PAPER OF TRINITY TERM, 1840.

Wednesday, 27th May }
 Thursday 28 } Motions in arrest of judg-
 Friday 29 } ment
 Saturday 30 }
 Monday 1st June
 Tuesday 2d
 Wednesday 3d, *Special Arguments*
 Thompson and another v. Farden and others

Brandão v. Barnett and others
 Hallewell and anor. v. Morrell, Robt., *sued with ors.*
 Doe (Burrin) v. Charlton
 Acland v. Pring, executrix
 Williams v. Baker
 Barrett v. Stockton and Darlington Railway Com-
 pany
 Crozier v. Smith
 Grimshaw v. Pickup
 Gould v. Leah
 Wood v. Morewood
 Ralmano and others v. Hands
 Williams v. Morgan
 Scales and others v. Hands
 Same v. Thompson
 Gwynne v. Davy and another
 Pottsonier, administrator v. Sanders
 Crowe and another, executors v. Martin
 Davis v. London and Blackwall Railway Company
 Smith v. Farmer and another
 Billing v. Kightley
 Kemble v. Mills
 Graeff v. Hallin
 Todhunter v. Johnson and another
 Berry v. Chadwick and another
 Jephson and another v. Howkins and another
 Priestley, clerk v. Foulds
 Devaux and another v. Astell and another
 Smith and others v. Jolley
 Same v. Bower
 Husband v. Goble
 Cowan and another v. Braidwood
 Ancell and others v. Powell and others
 Billing v. Kightley
 Wells and another v. Child
 Hine, clerk v. Reynolds, clerk
 Wilkinson v. Stephens
 North, administrator v. Wilder and another
 Wyne v. Wyne and ux.
 Andrews v. Morris
 Ashton v. Treestun
 Francis v. Fleming
 Biggenden v. Parsons
 Ley and another v. Ley and another
 Clow and another v. Brogden and others
 Thursday 4th June
 Friday 5 *Special Arguments*
 Saturday 6
 Monday 8
 Tuesday 9
 Wednesday 10 *Special Arguments*
 Thursday 11
 Friday 12 *Special Arguments*
 Saturday 13
 Monday 15
 Tuesday 16
 Wednesday 17, end of Term

Exchequer.

SPECIAL PAPER FOR TRINITY TERM, 1840.

Standing for Judgment.

Raleigh and others v. Atkinson
 Mortimer v. M'Callan
 Palmer, Esq. v. Powell

REMANETS FROM EASTER TERM, 1840.

For Argument.

The Edinburgh, Leith, and Newhaven Railway
 Company v. Hibblewhite
 Poole v. Hill
 Swan and another v. Appleton
 Jenkin v. Peace and others
 Green v. James
 Spry v. Empson

Patrick v. Stubbs, Esq.
 Kinlock and another v. Neville
 Gloyns v. Roach
 Evans v. Flight
 Kerr and others v. Gilbert
 Parker v. Hallin (first action)
 Same v. Same (second action)
 King v. Gillett

NEW TRIAL PAPER FOR TRINITY TERM, 1840.

Standing for Judgment.

Moved Michaelmas Term, 1839.

Winchester—Wicham v. Hawker and others
 (Heard 29th Jan. 1840)

Middlesex—Waugh v. Cope
 (Heard 29th April, 1840)

Moved Hilary Term, 1840.

London—Hunter v. Parker and another
 (Heard 2d & 5th May, 1840)

For Argument.

Moved Michaelmas Term, 1839.

Ruthin—Bloor v. Davies and another
 Yorkshire—Dixon v. Atkinson

Moved Easter Term, 1840.

Middlesex—Lamont and another v. Crook
 " Mayer v. Isaac
 " Bull v. Empson
 London—Ayre and another v. City of Dublin
 " May v. Husband and others
 " Abecasis and another v. Gabiddon
 " Same, survivors. &c. v. Same, survivors. &c.
 " Oppenheim v. Pickford and another
 " Metcalfe v. Fowler
 " Welborne v. Fancher
 " Lord Macclesfield v. Baddeley and others
 " Temple v. Stretton
 Lewis—Stockbridge v. Marshall
 Surrey—Machell v. King
 Shrewsbury—The Mayor, Aldermen, and Burgesses
 of Ludlow v. Charlton, Esq.
 Monmouth—Thomas v. Philpotts
 Winchester—Thistlethwaite v. Astley
 Exeter—Ridout v. Canning
 Northampton—Thorpe v. Goodwin
 " Whitnell, admor. &c. v. Porter
 Oakham—Lord Harborough v. Shardlow
 Derby—Atherston v. Pugh
 Warwick—Doe several demises of Gilbert and
 others v. Ross
 " Same v. Clifford
 " Henderson and another, assignees, &c.
 v. Crowley and others
 " Parrott v. Oakes
 Carlisle—Slevan v. Tatham
 York—Clayton v. Mellin
 " Fairburn & others v. Eastwood & another
 " Bell v. Hull and Selby Railway Company
 " Robinson v. Learoyd
 Lancaster—Gibbs and another v. Saunders
 Liverpool—Shaw v. Scarisbrick
 " Whitehouse the younger v. Flockton
 " Adamson v. Mitchell
 " Nelstrop & another v. Scarisbrick, Esq.
 " Brooke and another v. Greaves
 " Weston & ors. v. Leeds & ors. assocs.
 Merionethshire—Jones v. Owen
 Carnarvon—Potter and others v. Lloyd
 Carnarvonshire—Hesketh & an. v. Griffith & an.
 Chester—Corlett v. Jones & ors., exors., &c.
 Pembroke—Page v. Thomas

Moved after the 4th day of Easter Term, 1840.

Middlesex—Casey v. Tomlins and another

Eschequer Equity.*Sittings in Trinity Term, 1840.*

Wednesday May 27	Petitions and Motions.
Thursday .. 28	{ Exceptions, (part heard); <i>Stowman v. Kelly</i> ; and Causes.
Tuesday .. June 2	Petitions and Motions.
Thursday .. 4	{ Pleas, Demurrers, Exceptions and Further Directions.
Friday .. 5	Petitions and Motions.
Tuesday .. 9	{ Causes and Further Directions, Pleas, Demurrers, and Exceptions.
Saturday .. 13	Petitions and Motions.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.**House of Lords.**

- Copyholds Enfranchisement. *Ld. Brougham.*
[In Select Committee.]
- For facilitating the Administration of Justice.
[In Committee, 1st June.]
- Lord Chancellor.
- For the commutation of Manorial Rights.
[For second reading.] *Lord Redesdale.*
- Vagrants' Removal.
[For third reading.]
- To amend the Tithes Commutation Act.
[In Committee.]
- Tavistock Small Debts Court.
[In Committee.]
- To augment the Maintenance of the poor Clergy.
[For second reading.]

House of Commons.

- To amend the Law of Copyright.
[In Committee.] *Mr. Serjt. Talfourd.*
- To improve the High Court of Admiralty.
[For third reading.]
- To extend the Term of Copyright in Designs of woven Fabrics.
[In Committee.] *Mr. E. Tennant.*
- To carry into effect the Recommendation of the Ecclesiastical Commissioners.
[In Committee.] *Lord J. Russell.*
- To extend Freeman and Burgesses' Right of Election.
Mr. F. Kelly.
- Drainage of Lands.
[In Committee.] *Mr. Handley.*
- To amend the County Constabulary Act.
Mr. F. Maule.
- To amend the Laws of Turnpike Trusts, and to allow Unions.
Mr. Mackinnon.
- To consolidate and amend the Law of Sewers.
[In Committee.]
- Small Debt Courts for
Aston, Marylebone,
Liverpool, Wakefield Manor.
- Summary Conviction of Juvenile Offenders.
[In Committee.] *Sir E. Wilmot.*

- Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage.
Mr. W. Miles.
- Metropolitan Police Courts.
[For second reading.]
- To abolish capital punishment in all cases except Murder.
Mr. Kelly.
- To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.
Solicitor General for Ireland.
- For the further amendment of the Poor Law.
[For second reading.]
- For the improvement of Grammar Schools.
[In Select Committee.]
- Indemnity to Clerks of Attorneys, &c.
[For third reading.]
- Costs in Frivolous Suits.
[In Committee.]
- Rated Inhabitants Evidence.
[In Committee.]

THE EDITOR'S LETTER BOX.

In answer to an inquiry by F. B., we think it clear that an articulated clerk, who passes his last year with a conveyancer or special pleader, and who intends going to the bar, would not have that year allowed, as one, out of the terms he would have to keep before being called.

The letters of J. B. W.; "Studiosus;" J.; G. A.; and "Civis A." have been received, and are under consideration.

The observations in favour of the principle of the bill for summary remedy in cases of Seduction and Breach of Promise of Marriage shall be inserted.

A correspondent states, that in our report of *Salter v. Ponsford*, p. 45, *ante*, we state the rule to have been made absolute for setting aside the judgment, on the ground that the *ingrossed* plea delivered was not signed by counsel though the *draft* was, notwithstanding *Coleridge, J.* is made to say, that he is of opinion (and the court agreed) that the signature of the draft is sufficient. We are not aware of any error in this report. What is the correction proposed by A. B?

We have with some difficulty made room for the Common Law Cause Lists, and will give those of the Equity Courts next week.

Part II. of the Analytical Digest for 1840, was published on the first Saturday in the present month.

The full price will be given by our Publisher for any of the following Numbers of this work, viz., 334, 338, 340, 341, 397.

The Legal Observer.

MONTHLY RECORD FOR MAY, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

DEBATES IN PARLIAMENT RELATING TO THE LAW

EQUITY REFORM.

THE debate on the Lord Chancellor's Bill took place on Monday the 11th instant. The importance of the discussion induces us to state fully the two principal speeches.

The Lord Chancellor, having presented a petition from certain members of the legal profession in support of the above bill, proceeded to say, that he rose for the purpose of moving the second reading of a bill for the better Administration of Justice, which had been for a considerable time on their lordships' table. Although the time which had elapsed since the bill was introduced was much longer than he could have wished, still he certainly had no reason to regret the period that had thus passed by, because it had given an opportunity to those who took an interest in this subject to consider and examine the measure. It had occasioned very general and very deep discussion among professional men, and his conviction, he felt, was nothing more nor less than the fact, when he said that the measure had met with all but the unanimous concurrence of the profession. The opinion which the profession entertained on the subject, and which, to a certain extent, might be collected from the petition which he had just presented, arose from the decided conviction of those who had considered the question seriously, and who saw the absolute necessity of an extensive alteration. Indeed, there was no man who knew the manner in which justice was conducted in the Court of Chancery but must see that the power of that court was totally inadequate to the prompt and proper performance of the duties that devolved on it. The evil had been so often stated in their lordship's house, that he felt it almost unnecessary at this time to enter into any review of the accuracy of those statements. If he thought that any

proof of this were wanting, he should refer to the many bills which had been brought into Parliament for the remedy of this acknowledged defect. Bills with this object had been brought forward in the years 1829, 1830, 1832, 1833, 1835, and 1836, when the last bill was brought in by himself. The number of those bills was a proof, at least, that it was considered by those who had presided over that court that it was essential to the due administration of justice in it that some measure of alteration of the existing practice should be passed into a law. But an increase of power in the Court of Chancery formed only a portion of what he considered necessary to the establishment of a due administration of justice. Their lordships had disagreed from the last, principally, perhaps, because it was too extensive; because, perhaps, it went to effect what, in their lordships' mind, was attempting too much; and because their lordships considered it as involving measures of great difficulty, and measures about the expediency of which there might be considerable room for doubt. This bill did not go so far, nor would it interfere, he had the satisfaction of thinking, with any measures of a more extensive nature, which it might be deemed necessary at any time to adopt with reference to the Court of Chancery, and that the nature of the high office which he had the honour to hold might be altered in future in any respect, notwithstanding anything in this bill. He was not asking in this measure for relief for himself, or for others who might hereafter hold the great seal; this would not be the effect of the bill; on the contrary, it would probably add materially to the amount of the duties of whoever should preside in the Court of Chancery. He, however, had this protection, and the individuals who might hereafter succeed to the office had this protection, that it was utterly impossible to impose new duties upon the Lord Chancellor which that officer could perform. Unless their lordships could add to the twenty-four hours, they could not impose additional duties upon the Lord Chancellor. In fact, it was impos-

G

sible that any one individual could effectually do the duties which were already imposed upon the great seal. This bill might vary the duties, perhaps increase them, but it would afford no relief from the pressure of business. He therefore had no personal interest in the measure, but he considered it to be one of the duties of the office which he had the honour to hold, vigilantly to preside over the administration of justice throughout the country, and particularly in the court over which he presided; and when he saw that justice could not be done, when he found that in the court in which he presided the suitors had justice denied to them, because there was not sufficient power in that court to render effectual the administration of justice in it, he thought that their lordships would be inclined to agree with him as to the existence of the evil, and to assent to the expediency of devising some remedy for such acknowledged abuses. When he said that the business in Chancery was more than it was possible for any three men to get through, he thought he might go on to consider that this was so much confessed and admitted as a basis of argument on this subject, that it would not be necessary for him to take up much of their lordship's time by proceeding to demonstrate the fact by a reference to figures. Sometimes those who were not possessed of very accurate information on the subject were fond of referring to the number of bills in Chancery that were disposed of by Lord Hardwicke, and of remarking how ably that distinguished and eminent and learned man had gone through the duties of the Chancellorship. Now, no man had reason to regard Lord Hardwicke with more respect than he had—no one perhaps was more fully aware than he was of the way in which Lord Hardwicke performed the duties of the office. He (the Lord Chancellor) had had access to all Lord Hardwicke's papers, to all his note-books, and to the written judgments which he had delivered, and therefore he (the Lord Chancellor) could say that Lord Hardwicke had bestowed very great labour upon the duties of his office. Of that labour he had reaped the fruits, and though so many years had elapsed since Lord Hardwicke had held the great seal, the memory of his great talents and of the able manner in which he discharged the duties of the office had not yet passed away. When, however, he (the Lord Chancellor) looked to the quantity of business in Chancery at the time of Lord Hardwicke, and compared it with the quantity now, he was only surprised that Lord Hardwicke had not more leisure than it appeared he had. Now, with respect to the number of causes in Chancery, the books had unfortunately not been so accurately kept in Lord Hardwicke's time as it had been the practice to keep them since, and therefore the only comparison he could make would necessarily be incomplete. Lord Hardwicke had acceded to the great seal in 1756, and the year 1759 was the earliest date respecting which he (the Lord Chancellor) could give any information. The average number of causes, then, which were set down

for hearing in the five years ending with 1764, were 332, the average of the five years ending in 1769 was 461; that of the five years ending in 1804 was 501, while that of the same period ending in 1812, and immediately preceding the appointment of the Vice Chancellor had risen to 562. That was no doubt, a very great increase upon the average in Lord Hardwicke's time. But what was the case afterwards? By the end of the five years ending with 1824 the influence on the cause paper of the appointment of the Vice Chancellor was felt, and the effect was to raise the average number to 959. But the average number of the five years ending with 1839, which was the latest period for which an average could be calculated, was, 1,248. A very great increase, then, in the number of causes set down for hearing had followed the appointment of the Vice Chancellor. That showed to demonstration that in estimating the proper amount of power to be given to the Court of Chancery they ought not to look to the quantity of business which was done now in the courts, but they ought to consider what would be the result as to the increase of business, if the Court of Chancery were in fact thrown open to the suitors; that was to say, if the suitors of this country could have a court which they could resort to with any hopes of justice. He had shown that the number of causes had very much increased of late years. What was the case with respect to bills filed? The average number of bills filed in the five years immediately before the appointment of the Vice Chancellor was 1,830; the average of the period ending last year was 2,236. Then it ought to be considered, that there was scarcely any cause which had not to work its way up twice through the paper before it could have a hearing. In the very great majority of causes which came on for hearing, a reference to the Master became necessary, and was ordered accordingly. When this was done, and the inquiry was finished, the cause was again set down on the paper for hearing. Every cause, therefore, worked its way up the paper twice before it came on to be heard. Each of these causes took three years in performing this. The mere time, therefore, occupied in working through the list was three years, and during this period everything was suspended in the cause, except the expenses of the suitors. No exertions of the solicitor could remedy this. That was a great grievance, and one which he trusted that their lordships would feel it to be their bounden duty to put an end to, for it was nothing less than a denial of justice. There was no doubt that parties only came to the Court of Chancery when dire necessity compelled them. That was a grievance which ought to be remedied. There was another test by which the increase of business in the Court of Chancery might be rendered apparent. He would now call attention to the fund which was intrusted to the administration of the Court of Chancery. In 1802 the suitors' fund, that was to say, the money under the power of the Court of Chancery, being not all of it money in litigation, but the property of lunatics,

infants, trusts; in short, property of every description which could be under the administration of the Court of Chancery, amounted to 19,908,441*l*. In 1339 this sum had increased to 41,546,000*l*. Therefore in those 37 years the suitors' fund had more than doubled, and had reached the enormous amount he had last mentioned. That amount was too large to be administered by any one establishment. But thought it was true that part of this sum was there in consequence of delay in the Court, this was not true of the greater portion of it. Then as to the increase of business which accrued from the two other branches of the Court, it should be remembered that there had been a considerable increase to the duties of the Lord Chancellor in consequence of the appeals arising from the other two Courts. Now here again, on comparing the pressure of business upon Lord Hardwicke with the pressure upon those who might hold the Great Seal in these days, their lordships would be aware of the vast difference which existed in this respect; or their lordships might judge by considering that the increase of the annual average upon an average of ten years had been since the period of which he spoke from ten to fifty-two appeals. Under these circumstances it was impossible for the present power of the Court of Chancery to get through the business which at present came before it. Everybody who was conversant with the Court of Chancery was aware of the great extent of additional business which the establishment of railways had brought into the Court. He could not exactly calculate what was the proportion which it bore to the other business, but the amount was immense; and he believed nothing had been more beneficial than the effect of the interposition of Chancery, on the one hand, to prevent imposition upon individuals by the railway companies, or, on the other hand, to obviate the attempts of individuals to take advantage of the wants of the companies. This, their lordships were aware, must needs bring upon the Court much new business; and so it was with every variety of business which the public engaged in; it was quite sure to find its way, sooner or later, into a Court of Equity. Their lordships, many of them, might have had experience of what that was: in fact, there were few persons of considerable property who were without some experience of this at some period or other of their lives. It was most important, therefore, to the public and to individuals that the Court of Chancery should be put into a state to perform duly its functions. When he had brought in his last bill in 1837 he had then very recently acceded to the Great Seal, but he was certainly not a stranger to the Court of Chancery, having passed thirty years of his life in it; and every impression which he then entertained respecting the necessity of reform there, his subsequent experience had served to confirm. He had endeavoured, by every exertion of his strength, to get over the arrear of business, but his strength was not adequate to that purpose. Still he had done more business—that was to say, he had occupied more time

in the business of his Court, than any of his predecessors for one quarter of a century. It had not been usual of late for the Chancellor to hear causes in the first instance, but he had thought it his duty to take those causes in addition to the ordinary business. During the vacations and other seasons in which their Lordships' House was not sitting, he had thought it his duty to sit in Chancery; but the effect of all his labour had been comparatively trivial, or rather all that he had done had been of no effect in diminishing the arrears. He was convinced, therefore, that nothing but a great accession of strength to the court could do that justice to the public which the public had a right to demand.

His Lordship then proceeded to state his view of the *remedy*:

In the present bill he had as much as possible avoided whatever was likely to create controversy, and had endeavoured to embody those points which were likely to meet with the greatest concurrence. The principal point to which he should call attention was the alterations he projected in the Court of Chancery. Another point was the state of the Court of Exchequer; the third was the Judicial Committee of the Privy Council. Their lordships were aware that the Court of Exchequer exercised a jurisdiction at common law as well as in equity. This last jurisdiction was until very modern times exercised by the court itself, that was to say, by the Barons sitting together. Latterly a change was introduced, and the Chief Baron was empowered by act of Parliament to sit in Equity by himself. That was the first step to the division of duties. The act also contained a provision, which was extended by a subsequent act, enabling one of the barons, to be named by the Crown, to sit in case of the absence of the Chief Baron; so that in point of fact, there were two courts of Exchequer. Well, that court being thus divided into two, there were consequently, many temptations to come into that court. One was the profits of the solicitor there, as compared with the Court of Chancery. A person who was conversant with the subject, had told him that the profits on the equity side of the exchequer were at least ten per cent. greater than those in Chancery, and he himself had caused a comparative bill of costs to be drawn up, and that fully bore out the statement. The principal cause of this discrepancy was, that in the Exchequer 72 words were allowed to a folio, while in Chancery 90 words went to a folio. Then a party in chancery might have his cause depending for from three to six years before it was decided. But in the Exchequer there was no arrear whatever. The suitor there had not to wait a moment. As soon as the cause was ready for hearing, it was heard in the Exchequer. This would appear to be in favour of the Exchequer. But the fact was that this was a matter of taste, and though there were all these temptations to suitors, the result was not such as might be expected. The state

ments he had made shewed that the business in Chancery had trebled since 1764, and since 1812 had doubled. Now in 1764 the number of causes in the Equity Exchequer was 83; in 1794 it was 106; in 1804, 106; in 1812, 116; in 1824, 116; in 1835, 111; in last year, 102; so that while the business in Chancery had trebled last year, the business in the Exchequer had been less than any year since 1794. The returns of bills gave corresponding results. There must be some reason why the business in Chancery stood in this relation to the equity business of the Court of Exchequer. It was no fault of the learned judges of that court. He was perfectly satisfied that every attention had been paid to the equity jurisdiction of that court, and he believed that the duties had been satisfactorily done. Why then did the public repair to the Court of Chancery, and not to the court of Exchequer? First of all, the Exchequer was not constituted as the exigencies of the public required. The system of having one court for the administration both of equity and of law was not consonant with the spirit of these times. Time was when the barrister practised both in law and equity, as was the case at present in Ireland; but when the bar were divided between law and equity, it was competent for the Crown to take judges from one description of court or the other. It was likewise a great inconvenience to the solicitors transacting business in the Court of Chancery to have anything to do with any other court. The practice of the two courts was different; and a clerk well practised in the management of a suit in the Court of Chancery might be perfectly ignorant of the conduct of a suit in the Court of Exchequer. The inconvenience to which the solicitors were subjected was, to a certain extent, felt by the bar, and no equity barrister, if he could possibly avoid it, would have anything to do with a suit in the Exchequer, because it removed him from the court in which his practice lay. It therefore happened that solicitors were content to take less fees, rather than go into the Court of Exchequer and have an immediate decision of their causes. This was an objection applying to the court itself, and not to any particular judges, for he had known distinguished equity men at the head of the Court of Exchequer when the same reluctance was manifested by equity practitioners to go to that court. There was one branch of practice which had hitherto brought many suitors to the Court of Exchequer—he alluded to tithe suits; but their lordships were aware of the probability, nay, the certainty, of those suits ceasing to exist. While the Court of Exchequer had failed in gaining the good will of the public as a Court of Equity, it was on the other hand amply compensated for that failure by the opinion it had established for itself as a court of common law. And he believed it had now more business in actions between individuals than any other court. It was a most thriving and useful court for business in common law—it was useless as a court of equity. The Chief Baron had to sit at Nisi Prius. He might be called on to attend the

Judicial Committee of the Privy Council, and he had many other important duties to perform. It was therefore a matter of uncertainty to the suitors in that court who would be the judge in equity, and this uncertainty was far from being satisfactory to them. The only remedy he had heard suggested for this state of things in the Court of Exchequer was the appointment of another judge, that was to say, a sixth judge in that court, who should exclusively devote his attention to the business of equity. This arrangement would answer no purpose. If there was not equity business enough in that court for a judge, or half a judge, singly, why appoint another judge, who would have little or nothing to do. The Court of Exchequer had only 1-13th part of the equity business of the Court of Chancery. But it was argued that if an exclusively equity judge were appointed in the Court of Exchequer, the public would then be drawn to that court, as the practice was more profitable to solicitors. This might be the case if there were no other inconveniences connected with the equity practice of the Exchequer; but there was another great inconvenience, which could only be remedied in the way he proposed. There was no appeal from the Court of Exchequer except to the House of Lords. Now it would be perfectly ridiculous to appeal to that house upon an erroneous decision with respect to interlocutory applications. In the Court of Chancery, however, such matters would come before the Chancellor, and then the application might be reheard. It very frequently happened that these erroneous decisions resulted from the circumstance of the parties themselves not having understood and properly stated their own case, and in the Court of Chancery the rehearing enabled them to correct their own errors. He had seen it suggested in print, that this evil, as connected with the Court of Exchequer, might be removed by allowing an appeal from an individual judge of that court to the Lord Chancellor. This was an extravagant proposition; for the courts were entirely distinct, and the Court of Chancery had no superiority or jurisdiction over the court of Exchequer. But if the proposition were adopted, the Court of Exchequer would be to all intents and purposes a part of the Court of Chancery, except in name. Why, then, should the title of "baron" be preserved, if he was in fact transformed into a Vice Chancellor? But this was not all. As noble lords might imagine, the establishment necessary for the administration of a distinct branch of the law—that of equity—required a great number of officers, a complete staff indeed, whether the suits were numerous or few. Their lordships would be surprised at the expense of such an establishment for the Court of Exchequer, having an additional baron exclusively confined to equity, as compared with the business to be transacted. Whatever merits the Court of Chancery might have, it was never supposed to be a particularly cheap court, but its cost would be as nothing compared with that of the Equity Exchequer, taking into account the business done. From

the best information he had been able to get, he learned that the expence of the establishment of the equity part of the Exchequer was not less than 18,000*l.* which was at a rate, considering the work done, as if the court of Chancery cost about a quarter of a million. Taking the number of cases in Chancery, and dividing them among the different masters, it appeared that there was one master to every 120 cases; while, according to the present state of the Court of Exchequer, there was one master to every 58 cases. It was obvious that such a system led to great and useless expence. What, then, was the proposition of the present bill? To abolish the equity side of the Exchequer altogether, to transfer its equity business to the Court of Chancery, and leave the Court of Exchequer to the discharge of those functions which it had shewn itself so well capable of performing. This scheme would add 100 cases to the 1,200 or 1,300 already in the Court of Chancery, but it would at the same time afford the means of getting rid of many offices in the Exchequer, which existed only for the purpose of administering that portion of equity business which found its way to that court. Some of the officers who might be made available, would be transferred to the Chancery, but the number of these compared with those got rid of was trifling. Compensation would of course be afforded to the officers whom it might not be thought necessary to retain.

His Lordship then adverted to the subject of the *Judicial Committee of the Privy Council* :

A great addition had of late years been made to the duties imposed on the Privy Council, owing to the appeals from the Admiralty and Vice-Admiralty Courts abroad, and from the colonies, in which a variety of laws was administered. The inconvenience felt in the discharge of these duties by the Privy Council had led to the passing of a bill establishing a Judicial Committee of that body, and, as far as the decisions in individual cases went, the result had been most satisfactory. But the judicial officers appointed members of that committee, such as the Chief Justice of the Court of Queen's Bench for instance, had other important duties to perform, which they could not neglect, and therefore they could not always attend the committee. To remedy this inconvenience it had been proposed to appoint certain of the puisne judges members of the committee; but he thought this a system which their lordships would not approve of, for he did not think it right that any individual puisne judges should be selected from among their brethren, and distinguished by being made members of the Privy Council. It was then suggested that all the puisne judges should be made Privy Councillors, but such a plan was objectionable, as it would throw new obligations on those high functionaries. When the judicial committee was appointed, it did not seem to have been at first suggested as an inconvenience that no head was appointed to the committee; but this in-

convenience seemed to have been early felt, for in 1834 a bill was introduced authorizing the Crown to appoint a head to the Judicial Committee. The noble and learned lord who introduced the bill proposed that the Lord Chancellor and the Chief Justice of the Queen's Bench should be vice-presidents of the Judicial Committee, the Lord-President being, of course, officially President. The bill never came to a second reading. That evil, then, of the want of a head to the Judicial Committee still continued. He had endeavoured to remedy that defect, and the mode in which he proposed to do so was to put at the head of that Court the Master of the Rolls, who had for 50 years before the establishment of the Judicial Committee been in the habit of presiding in the Privy Council. When the Judicial Committee was appointed, that high officer had withdrawn his attendance; but there was no reason why it should not be restored. He looked to him as the natural head of that Court. It was necessary they should have the highest judicial officer who could afford time to attend to its duties; for the questions which came before that Court were most important, embracing as they did the decisions of the Ecclesiastical Courts, and Vice-Admiralty Court abroad, involving points of common law as well as equity, and requiring a knowledge of Colonial, Spanish, Dutch, and East Indian law. It was, therefore, not only requisite that the individual should always preside, but that his acquirements and standing should be such as to give the profession and the public confidence in his decisions. He confessed he had come to the determination of proposing the Master of the Rolls for the performance of this duty, although he must thereby deprive the Court of Chancery of a certain portion of his services. But that was an inconvenience which he would be obliged to put up with, unless his noble and learned friend could devise some means of obviating it. If not, the Master of the Rolls, a chief baron, or a judicial officer placed in one of the highest situations of the country, must be appointed, in order to give effect to his decisions; and it appeared to him that it would be more easy to supply the loss which would be sustained by the Court of Chancery by the absence of the Master of the Rolls for a certain number of days in the year, than of the judge of any other court; because there would be no difficulty in distributing the increase of equity business which might arise from the absence of the Master of the Rolls among the present and additional judges of that court, so that at least no delay would be occasioned thereby to the suitors. He therefore proposed that the Master of the Rolls should be the Vice-President of the Judicial Committee, to attend in all cases the sittings of that Court, with power to the Crown, in case of his necessary absence, to appoint another Vice-President in his stead. In order to facilitate the administration of justice in the Judicial Committee, he was anxious, as occasion might require, that the assistance of some of the learned judges should be had, not as members, but

merely to give their advice, as they did to their Lordships when occasion might call for it. He thought that would be convenient; it would not often be necessary, for questions of common law were not so frequent before the Privy Council as matters of equity; but still this formed no essential part of the measure he proposed. He had now stated the details of his plan with respect to the equity jurisdiction of the Exchequer, the Privy Council, and the exigencies of the Court of Chancery, which under the proposed scheme would lose the assistance of one of its judges for a certain portion—say 50 days in the year; and taking into consideration the additional business which would be imported into that court from the Exchequer, to the extent perhaps of other fifty days, there would be the business of one hundred days added to the Court of Chancery. From the best calculations he had been able to make, one additional judge, independent of this arrangement, would not be adequate to the business of that Court, but he believed that two, with the additional burdens he had explained, would enable the Court of Chancery to get through, provided there was no very great increase of business. He had great expectations that even that number of judges would be found inadequate, for this reason—that when suitors had a prompt adjudication of their causes, the increase of business, he should say the increase of justice administered to those who required it, would be great indeed. In proposing the present plan he wished to guard himself against the supposition that he considered it all that was necessary. He thought it all that should be done now, because he believed it was sufficient to remedy one great and acknowledged evil. He left the appellate jurisdiction untouched. There were other matters too, connected with the interior jurisdiction of the Court of Chancery, which required revision even after giving it greater judicial strength. He was perfectly satisfied, that on many points, when duly investigated, their Lordships would be of opinion, that material improvements might be introduced by diminishing expense and delay before the cause came to a final decision. But these would be matters, should their Lordships sanction this bill, for future consideration. There was one part of the case which he was sure their Lordships would hear with satisfaction—that although a large addition of officers was proposed to be made to the Court of Chancery, its own funds were amply sufficient to carry the plan into effect, both with respect to the new judges and compensation to the officers of the Exchequer, without expense to the public. He, therefore, begged leave to move that the bill be now read a second time.

Lord Lyndhurst seconded the motion.—The state of the Court of Chancery had been so frequently under discussion in that house, and the general nature of the facts was so well understood, and in truth so accurately and fully stated by his noble and learned friend, that it would not be necessary for him

to trespass for any length upon their lordships' time, particularly as he had stated that it was his intention to vote for the second reading of this bill. The evil to which his noble and learned friend had alluded was by no means of modern origin. The arrear in the Court of Chancery had existed for a very long period of time. It was almost coeval with the existence of that court: it was complained of over and over again even in that golden era to which his noble and learned friend had referred—the time of Lord Hardwicke. It was, he believed, as great as ever it was on any former occasion, which he did not ascribe as matter of reproach to the learned judges of that court, because he was sure that men of more industry, more perseverance, more activity, and more accurate knowledge in their profession could not be placed in their situations. It arose from the overwhelming business of the court, with which its strength was wholly incompetent to cope. His noble and learned friend had alluded to the manner in which this operated, and to which he himself had taken the liberty of calling their lordships' attention on more than one occasion. It operated with a species of compound force. It was not in a court of equity as in a court of common law. If the decision of a case in a court of common law were postponed, it would be at length heard and decided, and then there was an end of it; but, as his noble and learned friend had accurately stated, the case in equity, before being finally disposed of, generally came repeatedly before the court, and every interval therefore between the time of setting down the cause for hearing and the time when it was actually heard must be multiplied by the times it so came before the court, so that the evil was increased in an accumulated ratio. He had always felt that this was a great and intolerable grievance—it was an opprobrium to the country. No person who had not been connected with a court of equity, or the suitors of that court, could possibly form any conception of the extent of misery it produced to individuals and to entire families; it would be a disgrace to the parliament of this country if it did not take effectual measures to put an end to such a state of things. If parliament were willing to do so, it would be a disgrace to the government of the country not to co-operate with parliament for that purpose. Therefore he most cordially supported the second reading of this bill. He hoped he should be allowed to say that he took satisfaction and pride to himself, because he had ever since he was connected with the Court Chancery done everything in his power to remedy the evils complained of. He had on two or three occasions brought forward bills corresponding in principle with that which had been introduced by his noble and learned friend on the wool-sack. In the result they were unsatisfactory; and he trusted their Lordships would allow him to say a few words with respect to the history of those proceedings, because they connected themselves with the course he was taking on the present occasion.

Their lordships would recollect that a commission was appointed to inquire into the condition of the Court of Chancery for the purpose of facilitating the progress of its proceedings. That commission was composed of the most intelligent and enlightened men, most conversant with the proceedings of the Court of Chancery. They made their report, and suggested many improvements, and when he had the honour of filling the situation now so well filled by his noble and learned friend on the woolsack, he drew up in conjunction with his colleagues, the late Master of the Rolls and the present Vice Chancellor, a series of orders founded on that report; his noble and learned friend who succeeded him continued those orders; he believed every thing recommended by that commission was carried into effect, the object being to expedite and facilitate the proceedings in courts of equity. The misfortune, however, of that commission was, that they applied themselves only to the course of the proceedings up to the time of the hearing. He had repeatedly stated in the other house of parliament, and also before their Lordships, that what he then did was only one step towards those measures which he thought necessary for the purpose of getting rid of the grievance which he believed existed in the Court of Chancery; and in pursuance of that system he had brought in bills which passed their Lordship's house, he believed with entire approbation, he believed without any division, which went to the other house of parliament, and were there received, certainly not with much favour; indeed, were it not for the respect he owed to that very enlightened assembly, he should say they were not received without something like clamour, and party prejudice, and passion. It was stated in opposition to those bills that they were wholly unnecessary; that the effect of them would be to render the situation of the Keeper of the Great Seal a sinecure: it was insinuated that such was the object with which they had been introduced, and the result was the bills were lost. He had never from that time abandoned the views he entertained upon this subject, and every thing that had since occurred in the Court of Chancery, every subsequent discussion in that house, had tended to confirm him in those opinions. All the facts now so well stated by his noble and learned friend were known at that time; but in the face of those facts the bills had been rejected in the manner he had stated. If it was admitted, and no man could deny, that there was more business standing in the Court of Chancery than could be disposed of by the judges of that court—if it was hardly an exaggeration to make use of the saying of the present Vice Chancellor, that “three angels” would scarcely be competent to the business, what was the simple remedy to be adopted in such a case as in any other business or proceeding in life? If the present judges were not competent to the work, we must have a fourth, and if a fourth was not enough, we must have a fifth. No other course consistently with common sense could be adopted;

he should therefore be acting inconsistently with himself, and deserting the duty he owed to the suitors of that court over which he had formerly presided, to their Lordships, and to the public, if he did not give to the principle of the bill introduced by his noble and learned friend his most warm and cordial support. He knew it had been thrown out as an objection to bills of this description that the number of appeals would be increased, and that it was idle to provide for the hearing of causes without providing also for the hearing of the additional appeals which must arise if the measure were carried into effect. Even admitting that the appeals would be increased, he could by no means admit the validity of the argument. Not more than one decision in fifty became the subject of appeal; was it nothing, then, that the 49 causes should be decided? If there was not sufficient force to dispose of the cause on appeal, still it was ridiculous to use that as an argument against the present measure. But the fact was not so. There was no arrear of appeals; and when the present arrear of causes was worked off by the assistance given by the new judge or judges, the number of appeals would not be so great that his noble and learned friend would be unable to keep them under as he anticipated, otherwise they must come to parliament to provide a remedy. Why should they in anticipation of an evil provide a remedy? They should rather wait till the evil displayed itself; then they would be enabled to say what was the extent of the evil, and the most adequate remedy that could be applied to it. It was therefore, though often urged, no argument against the measure of his noble and learned friend to say that there was no provision for hearing the additional appeals which would be created by the bill. Others, and among them men of great distinction and eminence, said they would not support a partial measure of this description; that there must be a general reformation and review of the whole court; that the appellate judicatory of their lordships must be reformed or abolished; that a wide and general measure of that kind must be brought into Parliament and carried into effect. All this was idle and chimerical. He had heard many complaints made of the appellate jurisdiction of their Lordships' and other tribunals, but he never heard any two individuals agree in a precise remedy; to wait therefore for a concurrence of opinion on measures of this kind, instead of providing a practical remedy for a great practical evil, would be doing a great injustice to the country. Here was a great practical evil, and a practical remedy pointed out for the evil. It would be effective for the object; consistently therefore with common sense and the principles of common justice they could not oppose this measure. So much as to the principle and the second reading of the bill. There were points of great importance which would be the subject of consideration and inquiry in the committee. The plan of his noble and learned friend involved three subjects; first of all, the Court of Chancery, the means of providing for the

arrears of that court, and the extent of assistance requisite; in the next place he proposed to abolish the equitable jurisdiction of the Court of Exchequer; and thirdly, he proposed some reforms and amendments in the Judicial Committee of the Privy Council. On each of these in their order he would say a very few words.

The noble Lord, after thus cordially concurring in the *principle* of the Bill, entered on some of the *details*, from which he appears to dissent:

He would only make one or two observations for the purpose of directing his noble and learned friend's attention to those points he was most desirous of having reconsidered. His noble and learned friend who succeeded him (Lord Brougham), by almost incredible exertions, wiped off the whole arrear of appeals which had been standing at about the same amount for a period of many years. He deserved the thanks of the country for these extraordinary efforts and exertions. Since that time there had been no arrear of appeals. That part of the case, therefore, was at least out of consideration. Now as to the state of the causes. He had looked at the returns, and he drew this conclusion from them—there was a great and heavy arrear—a stationary arrear—not a growing arrear. He remembered, when he had the honour of occupying the office of his noble and learned friend, in introducing one of those bills to which he had alluded, he directed his attention to the same subject, and he then stated in that house before their lordships, that there was no growing arrear—that the arrear was stationary, or nearly so. What was the consequence! If once that arrear were wiped off, the present force of the court would be sufficient to prevent its accumulation. Now, what was the conclusion he drew from this? That the addition of one judge to the Court of Chancery—a man of eminence, a man of standing, of knowledge in his profession, and industry, would, in a year and a half, dispose of the whole of the existing arrear. That arrear consisted of from 500 to 600 causes. The late Master of the Rolls disposed of nearly 700 causes in one year. The present judges then, it appeared, were sufficient to prevent the arrears from accumulating, and when, by the appointment of one new judge, they were wiped off, there would be this judge, in addition to the present judges, to hear the new causes. Then the question was, whether a *second additional judge* was required. If the facts which he had stated were correct, was it necessary to have two new judges in the Court of Chancery? He did not call upon their lordships to come at present to any conclusion upon this question, but he requested them and his noble and learned friend to give it their serious attention. His noble and learned friend had said, and he (Lord Lyndhurst) had often heard it said before, that if the court were opened, and if facility were given for

hearing cases, there would be a very great increase of business in the Court of Chancery. That might be so, but it was a matter of pure speculation and conjecture, and when the increase took place, it would be time enough to provide for it by the appointment of a second new judge. But he repeated, this increase was at present merely speculative. In one of the Chancery Courts there were at present no arrears: he believed the number of causes standing for hearing in the Roll's Court did not exceed 140; and his noble friend who presided over that court was in the habit, he believed, of getting through 200 causes in the course of the year. There was, therefore, in this court ample room for the additional suitors whom it was supposed that additional facilities would call forth. Why did they not come into this court? It was not from any want of learning, intelligence, impartiality, or independence on the part of that learned judge. There was room for suitors to come in, but it did not appear that this circumstance had caused any increase in their number.

The equity side of the *Exchequer*, to which his noble and learned friend had alluded, was another instance. There was no arrear in that court; the suitors had not to wait there even as long as they had in the court to which he had just adverted; for in the Exchequer Equity Court a cause was heard in a few days after it was set down. Why then was there not a great increase of business in the Exchequer? Looking at these facts, he doubted whether the speculation of his noble and learned friend as to the increase of business to be expected from the appointment of a new judge was well founded. He (Lord Lyndhurst) said he entertained a doubt; but at all events, was a mere speculation or conjecture sufficient to warrant their proceeding at once to the appointment of two new judges in the Court of Chancery? He would now come to that part of the bill which proposed to abolish altogether the equity jurisdiction of the Court of Exchequer: that would be a proper subject for discussion in committee, and it was one involving important considerations. He remembered that when he first sat upon the woolstack, having less experience and more courage than he possessed at present, he had brought in a measure, which was not indeed a bill to abolish the equity jurisdiction of the Exchequer; but having introduced his bill, he had stated that one of its objects was to abolish that jurisdiction. How was he met on that occasion? Why, Lord Eldon, who had sat upon the woolstack 25 years, came down to the house and opposed the bill with the utmost warmth and earnestness. Besides meeting with the opposition of Lord Eldon, he (Lord Lyndhurst) had to encounter that of Lord Redesdale, a judge of very great experience and knowledge in his department of the law. The whole weight of authority, not only of the equity courts, but also of the Chief Justice of the Court of King's Bench, was thrown into the scale against him (Lord Lyndhurst), and the opposition was of so formidable a character, and the weight of the au-

thority opposed to him, was so great, that he was obliged to renounce his design, and had never afterwards ventured to bring it forward again. He did not say that he had changed his opinion, or that he now thought that he had been wrong upon that occasion: all he said was, that the subject was one which ought to be considered with great care, attention, and caution. The abolition of the equity side of the Exchequer did not appear to be a necessary part of a bill the object of which was to give additional force to the Court of Chancery, while it might lead to many inconveniences. The business of the equity side of the Exchequer had been stated as consisting of from 60 to 70 causes in the year, or rather more than one-fourth of the business of the Rolls Court; but, besides this regular business, there was a variety of summary applications of an important kind which required to be promptly disposed of, and which were referred expressly to the equity side of the Court of Exchequer on account of the prompt manner in which it was able to deal with them. Now, what would be the effect of transferring all this business to the Court of Chancery by a bill introduced for the purpose of getting rid of the arrears in that court? The provision certainly did not appear to be a necessary part of such a measure. He had heard it said that the equity jurisdiction of the Court of Exchequer was an incumbrance upon the common law jurisdiction, and that the common law side would work better if the equity jurisdiction were got rid of. This appeared to be a singular proposition, since, although a greater number of causes were entered in the Exchequer than in the other courts of law, there were arrears in both the other courts, and none on the common law side of the Exchequer; so that the five judges of the Court of Exchequer were not only able to dispose of all the common law business of the court, but they also disposed of, and, as he understood, well and satisfactorily, a considerable portion of equity business besides. He submitted, therefore, to their Lordships that these were reasons for pausing before they assented to this provision of the bill. But he was next told that the machinery of the equity side of the Exchequer was cumbrous, and that its practice did not correspond with the practice of the Court of Chancery, and that therefore solicitors were not disposed to bring their causes into this court. He could not consider this as a sufficient reason for abolishing the court altogether. The whole of the practice in the Court of Chancery had been remodelled within the last few years. Why should not the same thing take place with respect to the Court of Exchequer? When he was at the bar the practice varied in each of the common law courts; the course of proceeding in the Court of King's Bench was different from that in the Court of Common Pleas, and this again differed from the practice on the common law side of the Exchequer; yet all these courses of proceeding had now been rendered uniform, and why should not the practice of the equity

side of the Exchequer be made to correspond with that of the Court of Chancery? It was said that some called the Court of Chancery a grievance, and others a nuisance, on account of causes not being heard for three years after they were set down; and in order to apply a remedy to this grievance, it was proposed to abolish an equity court entirely free from the inconvenience and evils which were the subject of complaint. Would it not be dealing hardly with the present suitors in the Exchequer Court, whose causes were to be transferred by this bill to the Court of Chancery, and who had probably instituted their suits in the Exchequer for the purpose of insuring a prompt and speedy decision, to hand them over to a court where their causes might not be heard for three years to come? With regard to the appeals from the Court of Chancery and the equity side of the Exchequer, there appeared to be an advantage of no slight importance in favour of the latter, for when the appeal was made from the Court of Chancery, it was heard in that House before the very judge with whose decision the party appealing was dissatisfied. Now he (Lord Lyndhurst) did not mean to say that his noble and learned friend would not be as ready to review his own decision as to review that of another judge, but, after all, the question was, what would be the feelings of parties themselves upon the subject? Now, if the appeal were made from a decision of the Lord Chief Baron of the Exchequer, his judgment would be reviewed by another judge. Suppose any of their Lordships had a cause decided against him, however great might be the reliance which he might place upon the independence and integrity of the judge who had decided the cause, would he not rather have the judgment reviewed by another judge than the one with whose decision he was dissatisfied? That was one advantage of the equity jurisdiction of the Exchequer; but his noble and learned friend had said, and said justly, that there was one great evil in the Exchequer, which was, that there was no remedy if a party were dissatisfied with the decision of the court upon a motion except by appeal to their Lordships. But, in the first place, the motion might be reheard before the same judge; and, in the next place, the evil seemed to admit of an easy remedy without an appeal to the Court of Chancery. At present there were two equity judges in the Court of Exchequer; practically speaking, there were three, for he might reckon among them the learned Baron who lately filled the office of Solicitor General. Now, how easy would it be to give an appeal from the decision of one of those judges to one or both of the others; and was it not better for their Lordships to apply themselves to remedying the evil instead of abolishing the equity jurisdiction altogether? In Ireland the equity side of the Exchequer was for many years the favourite equity court; why should not the same take place in this country? Now, he pronounced no positive opinion on this subject: it did not appear to be a necessary part

of the bill, and would properly form matter of consideration in committee; but he felt it his duty to throw out these doubts of his, for he called them nothing more, and if they had been put rather in the form of arguments than of doubts, that was a habit which he had, and he should go into committee with his mind completely unbiassed upon the question, whether the equity jurisdiction of the Exchequer should continue or not.

Regarding the *Privy Council*, his Lordship agreed—

That it was proper to appoint a permanent Vice-President of the Judicial Committee, and he had over and over again so stated in his place in Parliament, and upon the same grounds as those mentioned by his noble and learned friend. He had no doubt as to the propriety of the proposal; but then came the difficulty to which his noble and learned friend had adverted. If personal qualifications were alone to be regarded, the difficulty would be at once removed, for there was no person whose learning, industry, and independent spirit better qualified him for the office than the noble Lord upon whom it would be conferred by the present bill. But this arrangement would be attended with great inconvenience, for the noble Lord must be taken out of his own court, which was at present the most regular of all the equity courts, having a judge who sat every day, besides having a regular bar of its own. Now, he (Lord Lyndhurst) was unwilling to see extended to the Rolls Court the inconveniences which he had over and over again heard urged as reproaches against the Court of Chancery, both in their Lordships' House and in the other House of Parliament. It was constantly exclaimed against as a great inconvenience that the Lord Chancellor should be taken from his duties in the Court of Chancery to preside in their Lordships' House; every one felt the inconvenience, but the difficulty was to find a remedy for it. It was now proposed to introduce into the Rolls Court the inconveniences which it had been found impossible to remedy in the Lord Chancellor's Court, and to transfer the same causes of complaint to a court in which justice was at present administered in the manner which he had just stated. Surely it was singular that in the same bill which proposed to abolish the equity side of the Exchequer, because it sat for only half the usual time, a provision should be introduced for the purpose of reducing the Rolls Court to the same state of incapacity which formed the ground of removing the equity jurisdiction from the Court of Exchequer. He submitted, therefore, to his noble and learned friend, that the subject deserved the greatest consideration; he (Lord Lyndhurst) admitted there must be a choice of evils, and it would be for their Lordships to consider, when the bill was in committee, which was the greater—the appointment of a permanent judge to preside over a tribunal which only sat for 50 days in the year, or the interference with the administration of justice in the Court of Chancery,

which would arise from interrupting the sittings of the Rolls Court. His noble and learned friend had used one argument which seemed a little fallacious, when he stated that the master of the Rolls had for 50 years presided by custom over the Privy Council. He (Lord Lyndhurst) admitted that the fact was as stated by his noble and learned friend, but at that period it produced no inconvenience whatever, because the Master of the Rolls sat in the evening from 6 o'clock till 10. At that time the Master only sat in the morning for a very short period in the year, and therefore his attendance at the Privy Council did not interfere with his sittings in the Rolls Court. The precedent consequently had no application to the present time, when the sittings only took place in the morning. There was another part of the bill upon which he should say but little at present, as his noble and learned friend seemed not indisposed to abandon it—it was that which enabled the Privy Council to call the judges to its assistance. Now, such a provision did not appear to treat the judges with sufficient respect. By long custom and ancient usage, the judges were in the habit of attending their Lordships, and of answering such questions of law as their Lordships thought proper to submit to them; but for the judges to attend the Vice President of the Privy Council at his disposition, appeared to be a little inconsistent with the rank and station which those learned personages held in this country. But not only was such a provision inconsistent with the station of the judges, but it was irreconcilable with the very constitution of the Privy Council itself, according to which no one could join in the Privy Council who was not himself a member of the Council. Now, the bill did not provide that the judges should merely advise the Privy Council on matters of law; they were to sit co-ordinately with the members of the Privy Council, and to have a voice in its decision of the same effect as that of the members of the Council themselves, so that it might happen that the majority might be composed of the judges assistant, and that the Privy Council might have to recommend the Crown to adopt measures which a majority of the Council itself condemned. Besides, every member of the Privy Council took an oath with respect to the discharge of his duties as a Privy Councillor, but this bill imposed no such oath upon the judges assistant. Some alteration would therefore be required if this provision was to be retained. There was this other objection to it, that some of the subjects on which the Privy Council would have to decide might be political cases, in which the ministers for the time being might have a deep interest. Now, this bill would give to the Government the power of selecting those judges to sit with the Privy Council who might be considered most convenient for the purpose of Ministers. That would be inconsistent with equity and with justice. He was not imputing or supposing anything with respect to the party now in power, but it was a principle which ought not

to be allowed to be established. That constitutional jealousy with which their Lordships ought to be impressed should make them careful how they established a principle which might lead to the most serious abuses in the administration of justice. He had thrown out these observations, not for the sake of opposing the bill, but for the consideration of his noble and learned friend. He had before said, that with respect to that part of the bill which related to the Court of Exchequer, when it went into committee he should enter upon the consideration of it free and unbiassed, and their Lordships would then have an opportunity of fully considering whether the alteration that was suggested was such as should be made. He considered the great principle of this bill to be this:—There was a standing arrear of causes in the Court of Chancery to be disposed of. It was not an arrear of to-day, or of yesterday, but had been existing for ages, for at least 100 years: he could himself trace it back through a period of 60 years. That state of things was grievous, and must be got rid of. The principle of this bill was to appoint additional judges to get rid of that evil. The other parts of the bill were only subsidiary to it, and might be adopted or not. If rejected, they would not impair the principle of the measure. He therefore would agree to the second reading of the bill, keeping his mind perfectly free and unbiassed as to the consideration in the committee of the various points to which he had directed their Lordships' attention. These points were as to the number of additional judges, the abolition of the jurisdiction of the equity side of the Exchequer, and the amendment of the constitution of the Judicial Committee of the Privy Council.

[We shall take an early opportunity of stating the observations of Lord Abinger and Lord Langdale.]

LAW OF ATTORNEYS.

THE cases materially affecting the law of attorneys during the last three months are few in number. They are collected in our Quarterly Analytical Digest, being Part II. for the present year, and are as follow:—

1. Where an attorney, attending a commission of lunacy for the petitioner, promised the undersheriff to pay the fees due to him, the commissioners and the jury, on the inquisition being returned, but failed to do so on the return and on request, the Court of Q. B. granted a rule calling upon him to pay such fees, on the ground that, when his undertaking was accepted, credit was given to him in his professional character. And it was held no objection to such rule, that the proceedings in

respect of which the obligation was incurred took place in another Court. *Ex parte Bodenham, Under-Sheriff of Herefordshire, in re Jephson, a lunatic*, 8 A. & E. 959.

2. Defendant, who had borrowed money of plaintiff, was, by an agreement, to which plaintiff's attorney was the attesting witness, to pay the expenses of that agreement, and of the various securities, including a warrant of attorney: Held, that plaintiff's attorney, who had prepared those securities, was compellable to deliver his bill to defendant to be taxed. *Painter v. Lindsell*, 6 Bing. N. C. 197; S. C. 19 L. O. 216.

3. The mere circumstance of a party being the attorney in the cause will not make him responsible for refreshments supplied by a coffee-house keeper to the witnesses while attending the trial. But the fact of his being found in communication with the witnesses at the coffee-house, is some evidence to go to the jury that the supplies were sanctioned by him. *Fendall v. Nokes*, 7 Scott, 647.

ANCIENT BILL OF COSTS.

THOMAS SCLATER, Esq^{re}.

Drawing and engr's assignment of Mr. Butb's mortgage	13	4
Duty and parchment	2	6
Drawing Mr. Butb's release of dower and engrossing	5	0
Duty and parchment	1	6
For a copy of Mr. Butb's settle- ment	5	0
	<hr/>	
	1	7 4

19th April, 1708.

Rece'd then of Thomas Sclater, Esq^{re}, the contents of the above written bill in full for all demands to this day.

JOHN ROWLEY.

THE LAW RELATIVE TO RATING STOCK IN TRADE.

AN important question has arisen in the Courts relative to the rating of stock in trade to the relief of the poor. The subject has also been recently noticed in Parliament. Mr. Lott, the solicitor, has very opportunely written a pamphlet, comprising an able review of the decisions in relation to the question under the 43 Eliz. c. 2.*

* The work is published by E. Spettigue, 67, Chancery Lane.

From this pamphlet we select the following passages :

"For a long period from the passing of the act, the rating was confined to persons in respect of the property mentioned in it. Indeed, the convenience and expediency of this mode of taxation, the facility of ascertaining the rateable value of the property in respect of which the party was to be assessed, and every other consideration pointed it out as the most equitable and just mode of carrying into operation the evident intentions of the act. At length it was attempted to rate persons in respect of stock in trade; and the following decisions will shew the repugnance with which the judges at first met such a construction of the act.

"In *Rea v. Inhabitants of Witney*, 5 Bun. 2634, the Court of Queen's Bench were of opinion, stock in trade ought *not* to be rated.

"There was a resolution of the Judges of Assize 1633, to the following effect:—'The land within each parish, is to be taxed to the charges, in the first place, equally and indifferently; but there may be an addition for the personal visible ability of the parishioners within that parish, according to good discretion, wherein if there be any mistaking, the sessions or the justices must judge between them.' Dalton, tit. Poor, ch. 73, p. 234, *id.* 1727.

"Although these resolutions were subsequently disclaimed by the judges, it is possible they originated the attempt to rate parties in respect of other property than that glanced at in the act.

"In *Q. v. Barking*, 2 Lord Raymond, 1280, Bott. 126; 1 Nol. Poor Laws, 204; Lord Holt, differing with his three colleagues in opinion, the following rule of court was made: "Upon mature deliberation, it is considered by the Court that a farmer is not taxable to the poor for his stock, and that a tradesman is taxable for his stock in trade." Lord Mansfield subsequently said "this was a strange case," (strange indeed!) *Rea v. Witney*, 1 Nol. P. L. 167; and in *Rea v. Ringwood*, Cowp. 326; 1 Nol. P. L. 167, said, "I think the justices would not have done very wrong if they had acquiesced in the practice which has obtained ever since the stat. of 43 Eliz., of *not* rating this property. How could they have rated this stock? Are the hops, and the malt, and the boiler, to be rated for the gross sum his stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all, especially when it appears that mankind have as it were with one universal consent refrained from rating it. The difficulties attending it are too great, and so the justices would have found them." The order of sessions confirming the rate was therefore quashed.

"Notwithstanding this opinion of that clear-sighted judge, so strongly expressed, and founded on reason and common sense, it became the practice in some parishes to rate persons in respect of stock in trade; but when the matter became the subject of litigation, the court were inclined to confirm the rating in

cases only where it had been the usage for some time past to make such rates.

"In the case of *Rea v. Hill*, Cowp. 613; 2 Arch. 1178; the Court ordered the rate to stand, *it having been the usage* to rate stock in trade in the parish.

"In *Atkins v. Davis*, Cald. 336, Lord Mansfield says, 'By constant usage (and I know not upon what other ground it is) ability to pay is measured by the local rateable property in the parish.' *Vide* 1 Nol. P. L. 73.

"In this case, Lord Mansfield further says—'The words of the statute are very loose and very general, and they may be construed into any latitude, even to make all a man has, and all a man gets in any way, the measure of his ability, for truly and substantially it is so; but usage has explained it and narrowed it. I know nothing of any usage that says a man shall pay according to his ability, in the obvious common sense of the word, (that is) all he gets or makes by his efforts or abilities. If this were the rule, every profession would be liable to be taxed for all they get upon an average. If we don't find it there, (*i. e.* in the usage) I know nothing in the words of the statute to prevent taxation being carried to that extent.'

"The following nice distinction as to rating occur in *Theed v. Starkie*, 8 Mod. 314; *Sir Anthony Earby's Case*, 2 Buls. 354: 'The poor or churchrates are taxes payable in respect of the land, but they are not payable out of the land, for the personal estate only is subject to them;' alluding probably to the remedy given by the statute of Eliz. of distraining goods for the poor's rate.

"The door once thrown open for rating persons in respect of personal property, much litigation was the result; various, curious, capricious and conflicting, are the decisions upon the subject, as a few by way of example will illustrate.

"Parties may be rated for a billiard table; for a chapel (if pew rents profitable), but not otherwise; not for a Quaker's meeting; tolls of a ferry or turnpike gates, are not rateable; tolls of a towing path, lock of a canal, sluice upon a river, are. Parties are rateable in respect of lime works and slate quarries, but not in respect of stone quarries. Parties are not rateable in respect of docks and navigation tolls. Lawyers' fees are not rateable, although they may have been rated for 60 years past. Lighthouse tolls are not rateable. A lessee of a stall in a market is not rateable, neither is a charity school, or St. Luke's Hospital. Waterworks, waterpipes, gasworks, and gas pipes, are rateable. Profits of a fair are not rateable, neither are market tolls. A lessee of bridge tolls is not rateable in respect thereof. Government stock is not rateable, neither are quit rents or profits of a manor; nor governors of a hospital, in respect thereof. Owners of a weighing house or engine house are rateable, as also is the warden of the Fleet, and the occupier of almshouses. The matron of the Philanthropic Charity is not rateable; but the owner or occupier of a palace (if a subject) is rateable.

"In the case of *The King v. White*, 4 T. R. 771, a rate had been made upon money; salary; a ship; wages; and stock in trade. The Court held 'ships were rateable, and stock in trade was rateable; but salaries, money at interest, money in possession, and household furniture, is not rateable. They might as well rate parties for their clothes.'

"It has been held that those persons who are residing in the parish are alone rateable in respect of stock in trade. *R. v. Curry*, 4 B. & C. 953. From what clause in the act such an exclusive system of rating has been deduced cannot well be made manifest. The taxation is to be made upon 'every inhabitant, parson, vicar, and other.'

"Upon this part of the subject it will be necessary to notice the words of Lord Tenterden, in delivering his opinion in the case of *Rea v. The Hull Dock Company*, 3 B. & C. 525; "Under the statute of Eliz. there was no word applicable to personal property, and it was only on the ground of his being an inhabitant that any owner of personal property could be rated for that property, because there was no word in that statute to include him, except the word 'inhabitant.' Under that statute therefore there was necessarily a distinction between residents and non-residents, because the resident would be rateable for his personality within the place, the non-resident not. The distinction, however, under that statute applied only to those kinds of property which the statute did not specify, for the occupier of houses, lands, &c., and whatever the statute enumerated, was rateable, whether he was resident or not."

We refer to the pamphlet for the further argument of the question. The above will be sufficient to shew our readers the point at issue, and which will probably require legislative interference.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

April and May, 1840.

Robert Woodward, Bouverie Street, Fleet Street.
George Haslehurst Bullivant, Alfred Place, Bedford Square.

George Hall, New Roswell Court.
Killingworth Hedges, Carey Street.
Alfred Bell, Lincoln's Inn Fields.
Edward Brydges Hardisty, Great Marlborough Street.

Edward Wallwyn James, Ely Place.
William Webb Hayward, Rochester.
Samuel Moores, Throgmorton Street.
John White, Lendenhall Street.
Henry Martin Harvey, Fenchurch Street.
Thomas Saunders, Queen Street Place.

MASTERS EXTRAORDINARY IN CHANCERY.

From 21st April to 22nd May, 1840, both inclusive, with dates when gasetted.

Adey, Anthony, Wootton-under-Edge, Gloucester. May 12.
Barnes, John Stuck, Colchester, Essex. May 19.
Barwick, John Marshall, Leeds. May 22.
Gingell, Henry, Heabury, Gloucester. May 19.
Glynn, Edward, Hexham, Northumberland. May 12.
Laughorne, John Bailey, Newcastle-upon-Tyne. May 15.
Salmon, William, Bury St. Edmond's, Suffolk. May 12.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st April to 22nd May, 1840, both inclusive, with dates when gasetted.

Cleife, Jacob Phillips, and George Wilson Grove, Exeter, Attorneys, Solicitors and Conveyancers. April 21.
Hume, Robert M., and W. Willoughby Gunston, Great Winchester Street, London, Solicitors and Attorneys. May 19.
Hughes, William Samuel, and Robert Rising, Worcester, Attorneys and Solicitors. May 22.
Jones, R. Humphreys, and J. F. B. Fay, Denbigh, Attorneys and Solicitors. May 1.
Lambert, Edward, and Henry Hardcastle Burder, (no residence gasetted) Solicitors and Attorneys. May 12.
Latchman, C. A., and J. Anderson, Bristol, Attorneys, Solicitors, and Conveyancers. May 19.
Norris, John, and Edward Norris, Liverpool, Attorneys and Solicitors. May 1.

BANKRUPTCIES SUPERSEDED.

From 21st April to 22d May, 1840, both inclusive, with dates when gasetted.

Baron, Thomas, Great Bolton, Lancaster, Cotton Spinner. May 12.
Ford, James Hilton, Holywell, Flint, Banker. May 15.
Fletcher, William, late of Bradley, Bilston, Wolverhampton, Stafford, Grocer, but now of Cam Lane, Sedgley, Stafford, Maltster. May 19.
French, Joseph, jun., Coventry, Ribbon Manufacturer. May 5.
Gibson, Robert, Holywell, Flint, Banker. May 15.
Hewlett, Thomas Barnard, and Daniel Hewlett, Northampton, Ironmongers. April 21.
Hetherington, John Howard, Corkickle Brewery, near Whitehaven, Brewer. May 5.
Hilton, William Legh, Holywell, Flint, Banker. May 15.
Jaques, John, Hare Street, Bethnal Green, Dyer. May 22.
Kimbell, Thomas, Haddenham, Buckingham, Grocer and Cheesemonger. May 1.
Palmer, Robert, Reading, Berks, Coal Merchant, Slate, and Salt Merchant. May 8.
Pearson, James, Stockport, Chester, Flour Dealer. May 15.
Russel, Richard, and Charles Joseph Russel, Ludlow, Salop, Scriveners. May 1.

Sepdon, Thomas, and George Seddon, Gray's Inn Road, Cabinet-Makers. May 22.
 Tyler, Henry, and William Tyler, Dudley Port, Stafford, Cement Manufacturers. May 15.

BANKRUPTS.

From 21st April to 22d May, 1840, both inclusive, with dates when gasetted.

Abram, Richard, Liverpool, Wine Merchant. *Adlington & Co.*, Bedford Row; *Littledale & Co.*, Liverpool. May 1.
 Baillies, Rodney, Merthyr Tydfil, Glamorgan, Draper. *Holme & Co.*, New Inn; *Prideaux*, Bristol. May 12.
 Backhouse, Noah, Southwold, Suffolk, Whitesmith and Gun Maker. *Kirk*, Symond's Inn, Chancery Lane; *Ewington*, Ipswich. May 12.
 Brown, James, and Benjamin Brown, Birmingham, Grocers and Chandlers. *Clarke & Co.*, Lincoln's Inn Fields; *Bennett*, Wolverhampton. May 12.
 Bryant, Abraham, Shepton Mallett, and of Wells, Somerset, Auctioneer and Builder. *Stiles*, Shepton Mallett. May 12.
 Brocklehurst, Jonas, Manchester, Fishmonger. *Adlington & Co.*, Bedford Row; *Chew*, Manchester. May 15.
 Brooke, James, Macclesfield, Chester, Silk Manufacturer. *Lowe & Co.*, Southampton Buildings; *Brocklehurst & Co.*, Macclesfield. April 21.
 Branscombe, William, late of Blandford, Dorset, Common Carrier, but now of Shaftesbury Place, Pimlico, Middlesex. *Lackington*, Off. Ass.; *Dacie*, Throgmorton Street. April 24.
 Butler, James Henry, and John Butler, Liverpool, Merchants. *Wyche*, Moorgate Street, London; *Howard*, Liverpool. April 24.
 Brough, Barnabas, Pontypool, Monmouth, Brewer. *Hall*, New Boswell Court, Lincoln's Inn; *Mabery & Co.*, Brecon; *Prothero & Co.*, Newport, Monmouth. April 28.
 Boden, Edward, Chester, Druggist. *Philpot & Co.*, Southampton Street, Bloomsbury Square; *Faulstner*, Bristol. April 28.
 Banks, Joseph, Liverpool, Tallow Chandler. *Fletcher*, Liverpool; *Adlington & Co.*, Bedford Row. May 1.
 Brereton, Charles, Joseph Vernon, and David Paul, Kingston-upon-Hull, Engine Manufacturers. *Lightfoot & Co.*, Hull; *Walsley & Co.*, Chancery Lane. May 5.
 Bowman, George, Leeds, York, Tailor and Draper, and Dealer in Ready Made Clothes. *Johnson & Co.*, Temple; *Green*, Manchester; *Naylor*, Leeds. May 8.
 Braddock, John, Ashton-under-Lyne, Lancaster, Chymist and Druggist, Oil and Colourman. *Clarke & Co.*, Lincoln's Inn Fields; *Higginbottom*, Ashton-under-Lyne. May 15.
 Brooks, Robert, St. Alban's, Herts, Grocer. *Clark*, Off. Ass.; *Robinson & Co.*, Charter-house, Square. May 22.
 Canter, Joseph, Barnsley, York, Linen Manufacturer. *Mence or Shepherd*, Barnsley; *Pocock & Co.*, Bartholomew Close. May 1.
 Carter, John, Birstal, York, Woolstapler. *Watts*, Dewsbury; *Jagues & Co.*, Ely Place. May 1.
 Clarke, John, Brook Street, Holborn, Green Grocer and Coal Dealer. *Green*, Aldermanbury; *Kennett & Co.*, Chatham Place, Blackfriars. May 5.

Chamberlain, John, Lisson Grove North, Paddington, Glass and Lead Merchant. *Turquand*, Off. Ass.; *Wadson*, Austin Friars. May 12.
 Caffyn, John, Brighton, Sussex, and of Howard Street, Strand, Picture Dealer. *Groom*, Off. Ass.; *Cross*, Surrey Street, Strand. May 12.
 Caton, John, Preston, Cotton Spinner. *Wiglesworth & Co.*, Gray's Inn Square; *Gorst & Co.*, Preston. May 19.
 Case, Matthew, and William Hodgson, Manchester, Commission Agents and Merchants. *Smith*, Chancery Lane; *Shuttleworth & Co.*, Rochdale. May 19.
 Dann, Thomas, Reigate, Surrey, Merchant. *Clark*, Off. Ass.; *Lutty & Co.*, Upper Thames Street. May 8.
 Evans, John, Bath, Victualler. *Messrs. Hill*, Verulam Buildings, Gray's Inn; *Hale*, Bath. April 24.
 Evans, David, John Street, Minorities, London, Stove Grate Manufacturer. *Clark*, Off. Ass.; *Saunders*, Queen Street Place. April 28.
 Evans, John Owen, Liverpool, Draper and Hosier. *Messrs. Baster*, Lincoln's Inn Fields; *Sale & Co.*, Manchester. May 1.
 Ely, Thomas, heretofore of Nottingham, Victualler, and late of Gedling, Nottingham, Farmer. *Campbell & Co.*, Essex Street; *Fox & Co.*, Nottingham. May 12.
 Elder, William, Newcastle-upon-Tyne, Grocer and Tea Dealer. *Meggison & Co.*, King's Road, Bedford Row; *Hogle*, Newcastle-upon-Tyne. May 19.
 Ford, Charles, Guildford Street East, Spaffelds, Jeweller. *Alager*, Off. Ass.; *Williams*, Alfred Place, Bedford Square. May 8.
 Fozzard, Edward, late of Dobcross, Saddleworth, York, but now of Tamewater in Saddleworth, Dyer. *Baltys & Co.*, Chancery Lane; *Ainley*, Delph in Saddleworth. May 6.
 Fry, Harry, Newport, Monmouth, Surgeon and Apothecary. *Crasby*, Bristol; *Bicknell & Co.*, Lincoln's Inn Fields. May 19.
 Gifford, John, Bridport, Dorset, Cordwainer and Leather Seller. *Mallock*, Southampton Street, Bloomsbury Square; *Bond*, Axminster. April 24.
 Greaves, William, Rawdon, Guiseley, York, Clothier. *Wilson*, Southampton Street, Bloomsbury Square; *Payne & Co.*, Leeds. April 28.
 Gold, John, Burslem, Stafford, Ironmonger. *Chaplin*, Gray's Inn Square; *Stubbs & Co.*, Birmingham. April 28.
 Griffiths, John, Manchester, Merchant and Commission Agent. *Tyler*, Staple Inn; *Charlton & Co.*, Hyde. May 8.
 Glyde, Samuel, Southampton Row, Russell Square, Middlesex, and of Yeovil, Somerset, Grocer. *Graham*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. May 15.
 Gibbs, Thomas Washer, Bristol, Soap Maker. *Makinson & Co.*, Temple; *Habersfield*, Bristol. May 19.
 Gould, Thomas, Cheapside, London, Stay Manufacturer, also carrying on business in Oxford Street, Middlesex, and at Portsea, Hants. *Pennell & Co.*, Off. Ass.; *Hall & Co.*, Salters Hall. May 22.
 Hardy, James Austin, Birmingham, Silver Plater and Manufacturer of Plated Ware. *Austen & Co.*, Gray's Inn; *Bower*, Birmingham. April 28.
 Hoskins, Joseph, Heicles Court, Broad Street, London, Chronometer Maker. *Belcher*, Off. Ass.; *Ashley*, Shoreditch. May 5.

- Hillier, Henry Bentick Currie, Montague Place, Russell Square, Apothecary. *Gibson*, Off. Ass.; *Hume*, Great James Street. May 8.
- Heyward, Robert, Lamb's Conduit Street, Linen Draper. *Clark*, Off. Ass.; *Hardwicke & Co.*, Cateaton Street. May 8.
- Halfpenny, Joseph, Aylesbury Street, Clerkenwell, Victualler. *Graham*, Off. Ass.; *Dingwall*, New Bank Buildings. May 8.
- Howells, William, Old Mill, Goodrich, Hereford, Miller and Corn Factor. *Hall*, Ross; *Smith & Co.*, Southampton Street, Bloomsbury. May 12.
- Higham, William, Knotty Ash, near Liverpool, Painter, Plumber and Glazier. *Hine*, Liverpool; *Chester*, Staple Inn. April 21.
- Harper, Joseph, Rotherhithe Street, Surrey, Shipwright, Barge Builder, Joiner and Blacksmith. *Whitmore*, Off. Ass.; *Lindsay & Co.*, Cateaton Street. April 24.
- Hewlings, George Stuart, and Charles Watlings Wisbey, George Yard, Lombard Street, London, Bill Brokers. *Twrquand*, Off. Ass.; *Young & Co.*, St. Mildred's Court, Poultry. April 24.
- Hay, James, late of Newgate Street, but now of Warwick Square, London, Surgeon and Apothecary. *Groom*, Off. Ass.; *M' Duff*, Castle Street, Holborn. April 24.
- Hickman, Anne Rebecca, Abergavenny, Monmouth, Victualler. *Michael*, Red Lion Square; *Baker*, Abergavenny. April 28.
- Harrison, Henry, Bruton Street, Builder. *Lackington*, Off. Ass.; *Bishop*, Southampton Buildings, Chancery Lane. May 15.
- Huddleston, John, Monkwearmouth Shore, Durham, Boat Builder. *Hodgson*, Broad Street Buildings; *Wilson & Co.*, Sunderland. May 15.
- Horton, David, and George Horton, Russell's Hall Iron Works, near Dudley, Worcester, Ironmasters. *Grasebrook*, Stourbridge; *Jenkins & Co.*, New Inn. May 15.
- Jones, John, Glynhafren, Llandiloec, Montgomery, Farmer. *Bigg & Co.*, Southampton Buildings, Chancery Lane; *Marsh*, Llandiloec. April 21.
- Jaques, John, Hare Street, Bethnal Green, Middlesex, Dyer. *Belcher*, Off. Ass.; *Teague*, Crown Court, Cheapside. April 28.
- Janion, John Smith Kingsley, Chester, Malster. *Chester*, Staple Inn. *Walker*, Chester. April 28.
- Jenner, Thomas, jun., High Street, Saint Giles, Oil and Colourman. *Johnson*, Off. Ass.; *Taylor & Co.*, Great James Street, Bedford Row. May 1.
- Johnson, James, Manchester, Innkeeper. *Adlington & Co.*, Bedford Row; *Chew*, Manchester. May 8.
- Jones, Thomas Eagles, Birmingham, Leather Seller. *Elderton & Co.*, Lombard Chambers, Clement's Lane; *Wills & Co.*, Birmingham. May 12.
- Jemmett, George, Long Acre, Coach Maker. *Whitmore*, Off. Ass.; *Robinson & Co.*, Half Moon Street, Piccadilly. May 22.
- Johnston, Robert, and Edmund Rowe Danson, Gracechurch Street, London, Wholesale Ironmongers. *Johnson*, Off. Ass.; *Phillips*, Clement's Lane. May 22.
- Jones, David, Pontfaen, Machynlleth, Montgomery, Flannel Draper. *Jones*, Welchpool; *Milne & Co.*, Temple. May 22.
- King, James, Salisbury, Wilts, Draper. *Green*, Off. Ass.; *Ashurst & Co.*, Cheapside. April 21.
- Kelly, William, Liverpool, Bookseller. *Pedder*, Liverpool; *Bowers & Co.*, Tokenhouse Yard. May 19.
- King, Eliza, Basingstoke, Southampton, Innkeeper. *Johnson & Co.*, Temple; *Cole & Co.*, Basingstoke and Odiham. May 22.
- Liggins, John, Hinckley, Leicester, Hosier. *Toller*, Gray's Inn Square; *Jarvis*, Hinckley; *Toller*, Leicester. April 21.
- Legge, Francis, Birmingham, Builder. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. May 1.
- Lockwood, Benjamin, Sheffield, Miller and Corn Factor. *Rodgers*, King Street, Cheapside; *Rodgers & Son*, Sheffield. May 8.
- Linsley, Joseph, Leeds, York, Woollen Cloth Merchant. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Teale & Co.*, Leeds. May 15.
- Mahony, Ellen, and Thomas Slattery, Liverpool, Merchants and Factors. *Dean*, Essex Street, Strand; *Kaye*, Liverpool. April 21.
- Moss, John, Sheffield, York, Chymist and Druggist. *Brooksbank & Co.*, Great James Street, Bedford Row; *Palfreyman*, Sheffield; *Dransfield*, Penistone, York. April 28.
- Mustow, Robert James, Birmingham, Victualler and Gun-Stocker. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. April 28.
- Miller, Thomas, Long Acre and Rathbone Place, Artist's Goulourman, and Pencil Maker. *Canham*, Off. Ass.; *Ford*, Bloomsbury Square. May 5.
- Midforth, Thomas Robinson, Leeds, York, Draper. *Richards & Co.*, Lincoln's Inn Fields; *Holme*, Leeds. May 8.
- M'Lintock, Joseph, Barnsley, York, Linen Manufacturer. *Mence*, Barnsley; *Pocock & Co.*, Bartholomew Close. May 12.
- Marshall, John, King William Street, London, and of Portland Place South, Clapham Road, Lambeth, Surrey, Commission Agent. *Lackington*, Off. Ass.; *Kiss & Co.*, New London Street. May 22.
- North, James, Leeds, York, Merchant. *Swan & Co.*, Serjeant's Inn, London; *Pettinger*, Pudsey. April 24.
- Nicholas, Henry, Piccadilly, Confectioner. *Gilby & Co.*, Carlisle Street, Soho. May 1.
- Nicholl, William, Warley, Halifax, York, Worsted Spinner and Cattle Dealer. *Wigsworth & Co.*, Gray's Inn Square; *Stansfeld & Co.*, Halifax. May 12.
- Nash, Thomas, Sulhamstead Banister, Berks, Grocer and Baker. *Weedon*, Reading; *Hill*, Copthall Court, Throgmorton Street. May 12.
- Partridge, Samuel, Carlisle Place, Lambeth, Surrey, Victualler. *Abbott*, Off. Ass.; *Ware*, Blackman Street, Southwark. April 24.
- Parsons, Richard, Nottingham, Brewer. *Brewster*, Nottingham; *Taylor & Co.*, Great James Street, Bedford Row. April 24.
- Priault, Nicholas Michell, Southampton, Wine Merchant. *Walker*, Southampton Street, Bloomsbury Square; *Deacon & Co.*, Southampton. April 24.
- Pontifex, Sydney, Noble Street, Saint Martins-le-Grand, London, Builder. *Edwards*, Off. Ass.; *Pope*, Gray's Inn Square. May 1.
- Parker, Richard, late of Hambro' Wharf, London, and of Oxford, and since of Anderton, Cheshire, Wharfinger, Carrier and Salt Manufacturer. *Alager*, Off. Ass.; *Messrs. Stevens & Co.*, Queen Street, Cheapside. May 5.
- Pratt, Samuel, Nottingham, Stone Mason. *Brewster*, Nottingham; *Taylor & Co.*, Great James Street, Bedford Row. May 5.

- Prior, Henry, Size Lane, London, Stationer and Wine Merchant. *Abbott, Off. Ass.*; *Lofty & Co.*, King Street, Cheapside. May 8.
- Poppleton, Charles, York, Linen Manufacturer. *Wiglesworth & Co.*, Gray's Inn Square. May 8.
- Parker, William Henry, Brecon, Printer, Book-seller and Stationer. *Gregory & Co.*, Clement's Inn; *Williams*, Brecon. May 15.
- Perks, Samuel, Dudley, Worcester, Builder. *Alban & Co.*, Lincoln's Inn; *Corser*, Stourbridge. May 15.
- Richardson, James, and Peter Richardson, Toxteth Park, Liverpool, Cart and Team Owners. *Wareing*, Liverpool; *Leather*, Liverpool; *Perkins & Co.*, Gray's Inn. April 21.
- Robinson, George, Huddersfield, York, Surgeon, and Mary Farrand, of Almondbury, York, Fancy Cloth Manufacturers. *Van Sandau & Co.*, Old Jewry; *Jacomb & Co.*, Huddersfield. April 24.
- Roberts, Robert, Yoxford, Suffolk, Currier, Leather Cutter, and Wine and Spirit Merchant. *Drake*, Bungay; *Nicholls & Co.*, Cook's Court, Lincoln's Inn. May 12.
- Rabone, Thomas, Burnt Tree, Tipton, Stafford, Huckster; and of Dudley, Worcester, Maltster. *Shaw*, Dudley; *Amory & Co.*, Throgmorton Street. May 15.
- Reinecker, Henry, Great Tower Street, London, Wine Merchant. *Vanning & Co.*, Tokenhouse Yard. May 19.
- Redford, Arthur, London Road, Southwark, Surrey, Printer. *Abbott, Off. Ass.*; *Harman*, Bennett Street, Blackfriars. May 19.
- Redpath, Leopold, Lime Street, London, Ship and Insurance Broker. *Gibson, Off. Ass.*; *Taylor & Co.*, Bedford Row. April 21.
- Racine, James, and John Jaques, Hare Street, Bethnal Green, Dyers. *Belcher, Off. Ass.*; *Tengue*, Crown Court, Cheapside. May 8.
- Smith, Thomas Yeadon, Guiseley, York, Clothier. *Wilson*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. April 21.
- Schofield, John, and Benjamin Schofield, Honley, Almondbury, York, Clothiers. *Jaques & Co.*, Ely Place; *Jacson*, Holmfirth, near Huddersfield. April 21.
- Savile, George, Swinton, York, Grocer and Draper. *Watson*, Sheffield; *Robinson*, Rotherham; *Atkinson & Co.*, Church Court, Lothbury. April 21.
- Seddon, Ralph, Salford, Lancaster, Dyer. *Milne & Co.*, Temple; *Potter*, Manchester. April 28.
- Storey, William, Sheffield, York, Pawnbroker, Woollen Draper and Tailor. *Rodgers*, Devonshire Square, Bishopsgate Street; *Staniforth*, Sheffield. April 28.
- Sanders, William, Birmingham, Apothecary. *Rowland & Co.*, White Lion Court, Cornhill; *Tyndall & Co.*, Birmingham. May 1.
- Shiers, Benjamin, Manchester, Commission Agent. *Appleby*, King's Road, Bedford Row; *Oliver*, Manchester. May 8.
- Smith, William, Upton, St. Leonards, Gloucester, Miller. *Lovegrove*, Gloucester; *Nicholls*, Cook's Court, Lincoln's Inn. May 8.
- Sloman, Charlton, Henry, and Henry Phillips, West Strand, Cigar Dealers and Tobacconists. *Green, Off. Ass.*; *Henson*, Mark Lane. May 12.
- Templeton, Thomas, and Archibald Templeton, Congleton, Chester, Silk Manufacturers. *Barlow & Co.*, Manchester. May 5.
- Tildesley, Samuel, jun., Leamington Priors, Warwick, Coal Dealer and Wharfinger. *Cary*, St. Swithin's Lane; *Kitchen*, Warwick. May 12.
- Tatlock, James, Liverpool, Saddler. *Norris & Co.*, Bartlett's Buildings, Holborn; *Messrs. Norris*, Liverpool. May 15.
- Tate, Caleb, Ashworth, Liverpool, Tea Dealer. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. May 19.
- Towers, John, Wolverhampton, Stafford, Hatter. *Philpot & Co.*, Southampton Street, Bloomsbury; *Phillips & Co.*, Wolverhampton. May 22.
- Walter, George, Change Alley, Cornhill, London, Commission Agent. *Edwards, Off. Ass.*; *Watson*, Tokenhouse Yard. April 21.
- Winkfield, John Atmore, Lyme Regis, Norfolk, Draper. *Tilsons & Co.*, Coleman Street. April 21.
- Waite, William, Yeadon, Guiseley, York, Clothier. *Wilson*, Southampton Street, Bloomsbury Square; *Payne & Co.*, Leeds. April 28.
- Westley, Augustus, Friar's Street, Doctor's Commons, London, and of Brooksby's Walk, Homerton, Middlesex, Publican. *Graham, Off. Ass.*; *Goddard*, King Street, Cheapside. May 5.
- Warrillow, John, Birmingham, Stationer and Paper Dealer. *Chaplin*, Gray's Inn Square; *Harriott*, Birmingham. May 8.
- Wheatley, John, jun., Leicester, Grocer. *Broughton*, Falcon Square; *Briggs*, Leicester. May 12.
- Whitehead, George, Fleet Street, London, Printer, and of Boyle Street, Burlington Gardens, Middlesex, Scrivener. *Edwards, Off. Ass.*; *Parker*, St. Paul's Church Yard. May 22.
- Wellington, James, Ross, Hereford, Butcher. *Hall*, Ross; *Smith & Son*, Southampton Street, Bloomsbury. May 22.
- Williams, Thomas, Liverpool, Linen Draper. *Abbott & Co.*, Charlotte Street, Bedford Square; *Messrs. Bennett*, Manchester. May 22.
- Youens, James, Ludgate Hill, London, Grocer and Tea Dealer. *Gibson, Off. Ass.*; *Amory & Co.*, Throgmorton Street. May 19.
- Yeld, William Walter, and William Bower Dawes, Rugeley, Stafford, Brewers and Corn Dealers. *Smith & Co*, Rugeley; *Dove*, Carey Street. May 22.

PRICES OF STOCKS.

Tuesday, 26th May, 1840.

Bank Stock, div. 7 per Cent.	176½
3 per Cent. Reduced	91½ a ½ a ½
3 per Cent. Consols Annuities	92½ a ½ a ½
3½ per Cent. Reduced Annuities	99½ a 100
New 3½ per Cent. Annuities	101 a ½ a ½ a ½
Annuities for 30 years, exp. 5th Jan. 1860	14 1/15
India Stock, div. 10½ per Cent.	253½
Ditto Bonds, 3 per Cent.	4s. pm.
South Sea Old Annuities, div. 3 per Cent.	89½
3 per Cent. Consols for the opening 16th July	93½ a 3 a ½ a ½
Exchequer Bills, 1000 <i>l.</i> at 2½ <i>d.</i>	23s. a 25s. pm.
Ditto 500 <i>l.</i> at 2½ <i>d.</i>	23s. a 25s. pm.
Ditto Small at 2½ <i>d.</i>	23s. a 25s. pm.

The Legal Observer.

SATURDAY, JUNE 6, 1840.

—“ Quod magis ad nos
Pertinet, et noscire malum est, agitamus.

HORAT.

THE LORD CHANCELLOR'S BILL FOR CHANCERY REFORM.

THE Lord Chancellor brought on his Bill for Chancery Reform on Monday last, for committee; and as we watch with great interest every step in this measure, and believe that it is shared by the Profession at large, we shall state what occurred. Lord Brougham commenced the discussion by opposing the Bill. He denied that any large measure of Reform was necessary, but thought that if there was any case made out, it went only to the appointment of one additional Judge. The Lord Chancellor answered this by referring to his former statement, “that the business of the Court had doubled since the year 1812, and trebled since the time of Lord Hardwicke;” and farther, that the forty or fifty of the first causes on the list had been waiting for hearing for *three years*; that almost all the causes on the list were in fact heavy causes, much more long and difficult to hear than appeals; and that thus a case was made out for the appointment of two additional judges. Lord Lyndhurst then said, that he thought that on the whole it would be better to refer the Bill to a Select Committee, which might inquire to greater advantage than could be done in the full House, whether one or two judges were necessary; but that if he found any case whatever made out for two judges (he being clearly of opinion that one was necessary, he would vote for two. Of this opinion also was Lord Ellenborough, whose bias seemed in favour of two. It was therefore agreed that the bill should be referred to a Select Committee.

If we thought that this step was intended to defeat the Bill, we should much deplore it; but we are well satisfied that all parties will

enter into the inquiry *bond fide*, and with the intention to settle the question. Lord Ellenborough truly stated that it had been before the House year after year, and that justice demanded a strong measure of relief; and we have every reason to think that the House of Lords is of this opinion. We think it will be found, that the Committee will recommend the appointment of two additional Judges; but of the success of all parts of the bill, we regret to say, we are more doubtful. There appears to be signs that the Equity Exchequer will be retained, or at any rate left to die away of itself; we may however be wrong in this presumption. At all events there is every probability of some measure of relief passing in the present session.

In this, as in other measures, it may not be always possible to do all that could be wished. In all great changes there are many interests to consult—many conflicting circumstances to adjust—and many difficulties to surmount, which do not always lie on the surface. The present nicely balanced state of political parties throws another impediment in the way of the settlement of any question. Under all these circumstances the profession and the public must consent to take such a measure of reform as they can get, not what they might wish. All that we have to pray is, that another session of parliament may not be allowed to close without putting an end to a state of things which amounts practically to a denial of justice to the suitor in equity. The Lords' Committee consists of the following members:—Lord Chancellor, Marquis of Lansdowne, Earl of Clarendon, Marquis of Salisbury, Earl of Devon, Earl Beauchamp, Viscount Canterbury, Lord Holland, Lord Camden, Lord Kenyon, Lord Redesdale, Lord Ellenborough, Lord Col-

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chester, Lord Rayleigh, Lord Strangford, Lord Lyndhurst, Lord Plunket, Earl of Haddington, Lord Brougham, Lord Denman, Lord Abinger, Lord Hatherston, Lord Langdale, Lord Colborne, and Lord Montague.

PECUNIARY INTEREST OF SOLICITORS IN EQUITY REFORM,

AND IN THE ABOLITION OF THE EXCHEQUER.

WE have high satisfaction in laying before our readers an admirable petition, signed by all the most respectable solicitors of Nottingham, on this subject. It is drawn up by parties evidently well acquainted with the real defects of the Court, and it points out forcibly what we have so often contended for; that the present measure must be accompanied or speedily followed, by improvements in the offices of the Court.

Seeing how deeply the profession itself as well as its clients, is interested in improving the Equity Courts, it is surprising that petitions on this subject are not much more numerous than they have been. That the solicitors themselves are injured greatly by the defects of this Court is most obvious, and it is therefore an honourable duty at once to themselves and their clients to get them amended. The Court is a ponderous and ill constructed machine, of which the profession are the workers, paid *not by time but by the piece*. Improve this machine so as to make it do double the quantity of work each year, and it will not only double the income each worker gets from his present employers, but it will also induce a vast addition of employment, or in other words, (and to continue a technical form of phrase) will bring vast additional grist to the mill. The worker, too, will not only be paid much more, but paid much sooner also; and his clients, a more numerous body in the whole, will each individually pay less rather than more, and get speedy instead of tardy justice for his money. If our local legal associations do not move in this matter they are indeed grossly neglecting the interests both of themselves and their clients. The London solicitors have, they will see, petitioned upon it, and a little more effort now, it is plain, will be enough to secure efficient legislative attention to the subject.

The most important part of the Chancellor's measure, is that relating to the increase of judicial power to the Chancery Court. As to this, not a word need be said, except that the country solicitors are more interested in the subject, than any other part of the profession, as they have to pay their agents during the progress of the suit, whilst they must wait till the end of it for re-imbursement. Their loss under this head is occasionally so great, that their half of the profit in the suit, is more than eaten up by the interest on their payments to their agent. We could name several country solicitors who absolutely refuse to undertake

Chancery business, considering it always a loss to them.

The next most important part of the bill, and the one on which there will be the greatest contest before the Lords' Committee, is that relating to the abolition of the Equity Exchequer.

The question on this subject seems to stand thus:—

This Court offers, theoretically, a more speedy decision, and higher fees to the solicitors. Practically speaking, however, the gain in speed is much lessened in ordinary cases by the great inconvenience of having to attend a distinct set of offices, and by the occasional absence of the judges on circuit. As solicitors can dispatch a variety of business in the Chancery offices at one time; the comparatively trifling business which they have to do in the Exchequer, is kept waiting for a leisure moment. When the judges are on circuit the Court business is entirely stopped, and this, at times, to the great injury of the suitor. There is a great difficulty too in the obtaining the attendance of counsel in that Court. The bar is necessarily a less efficient bar. The difficulty as to appeal is a very important one. Every man who goes there, goes subject to the almost uncontrolled error, or perhaps caprice of the judge. An appeal to the House of Lords, is in most cases, a remedy which cannot, from grounds of expense and delay, be resorted to. The present Chief Baron has lately (on a strong case too, as we understand) refused a rehearing on the ground that it would be stultifying himself to suppose a re-argument could make any difference in his views. While the diversity of practice is the cause of two-thirds of the present suits being taken there, it is at the same time a reason why both Bar and Solicitors detest the Court.

If this Court be left alone, and by increase in judicial power the delays in court business in Chancery be got under, the business of this court, which for twenty or thirty years has been annually decreasing, and has now dwindled to a mere trifle, would become so small that the officers (who are all paid by fees) probably could not afford to keep their offices open. If the practice be assimilated to that of the Chancery Court, this Court would be entirely stopped, and yet these differences of practice are all of them unjust advantages to the plaintiff, and kept up as temptations to him to use this Court.

To attempt to put this Court on a footing which should give it a fair chance of contending with the Chancery Court, would be so expensive an affair, that it can hardly be thought of: and if done—as such supposition implies the continuance of a distinct set of offices—it may be safely said that it cannot answer. This Court therefore must either be left to die a natural death, which is what Lord Abinger seems to desire, or it must be incorporated with the Chancery Court. To leave it to die of itself would be most unjust to the present officers. They certainly have the fairest title to compensation for the injury that

they must inevitably sustain from the projected improvements in the Chancery Court; and this scheme of holding on in the course of competition with the Chancery Courts, would deprive them of it.

On the other hand, the scheme of incorporating the Courts gives an increase to the official establishment of the Chancery Court, which will certainly be needed, and does this from a body of men already trained to the business, instead of taking it from strangers; and it gets over any difficulty that may be felt as to the necessity for appointing two new Judges in the Chancery Court, and not one only. It will greatly assist the solicitors and bar in the discharge of business: and it will enable all the officers attending to Equity business to be equally paid, according to the rank of their office, and to be worked at an equal rate, and to relieve one another under press of business; while on the system of separate Courts, did they answer ever so well in other respects, press of business must produce from time to time partial stoppages.

Uniformity of decision, practice, and costs, is highly essential to the well working of every branch of the law, and this would on the Chancellor's plan, be effected—or rather we should say on Lord Lyndhurst's plan, for the present plan is Lord Lyndhurst's original suggestion. It was pretty clear from the debate in the Lords on the 2d instant, mentioned in another place, that two new Equity Judges will be appointed. The only question will be as to abolishing the Equity Exchequer, and this question will be determined by the opinion expressed upon it by the profession. The Committee meets on Thursday next, the 11th instant. Before concluding with the petition above referred to, therefore, we will once more urge on the profession, particularly on country solicitors, the necessity of sending up petitions immediately, if possible before Thursday next, praying for—

- 1st. An immediate appointment of two new Judges in Chancery.
- 2d. The immediate abolition of the Equity Exchequer.
- 3d. That these measures be followed up by a thorough reform and strengthening of the Chancery Offices.

**PETITION OF SOLICITORS PRACTISING IN
THE TOWN OF NOTTINGHAM.**

Sheweth,—That your Petitioners have seen with great satisfaction and thankfulness, that a Bill has been brought into Parliament for adding to the Judicial strength of the Court of Chancery, and they are so fully impressed with the urgent necessity for a measure of the kind, and the benefit it will produce to the country at large, that they earnestly trust the Bill may pass into a law.

That your Petitioners fully concur in the proposal set forth in this Bill for transferring the Equity Jurisdiction of the Court of Exchequer to the Court of Chancery, as they consider that there is no advantage in having two distinct divisions of Courts and Offices for administering the same class of judicial business, and that it is both more convenient, and more economical to suitors, to resort

to the same Court for all the objects of relief in Equity.

That your Petitioners will gladly see that full compensation is given to all persons who can be losers by the transfer of the Exchequer Equity business to the Court of Chancery, and trust that no personal interests of this kind may prove impediments to a measure which, as your petitioners fully believe, will be attended with great public good.

That your Petitioners, while they acknowledge with gratitude the measure now introduced into Parliament for increasing the Judicial strength of the Court of Chancery, feel very strongly the urgent necessity which there is for further measures for improving the administration of justice in the Offices in Chancery, for your Petitioners believe that the needless delay and expense of proceedings in Chancery (which, by deterring the subjects of the realm from seeking redress from this tribunal, produce to a great extent a denial of justice,) arise even more from deficiencies in the Chancery Offices than from want of sufficient Judicial strength.

That your Petitioners believe that the arrears of causes before the Courts of Chancery are the arrears of contested causes; and that the measure now before Parliament, by quickening the hearing of causes, will only expedite such contested causes, but will give little relief in much the larger portion of the business of the Court, viz. "that connected with the administration of property, in which all parties interested are agreed in seeking the direction of the Court.

That this large and important part of the business of the Court has to be disposed of almost wholly by the Officers of the Court (occupying little of the attention of the Court itself); that it is in cases of this kind that needless delay and expense are the greatest evil to the suitors; and that this is the function of the Court which is of the most peculiar value to the public.

That your Petitioners conceive that the mode in which business is now transacted in the office of the Masters in ordinary of the Court, is productive of very great delay, and enormous expence and loss to the suitors of the Court, and that it is of vital importance to the ends of justice, and to the welfare of the public, that the state of business, and the mode of practice in all the offices of the Court, and especially in the Offices of the Masters in Ordinary, should have from time to time the most careful examination by the Judges of the Court; and that the fullest powers should be given to the Judges to regulate the practice, and add to the strength of the several Chancery Offices, so that the business in Chancery may at all times be done in the most efficient, expeditious, and economical manner.

Your Petitioners therefore pray your Right Honorable House that the Bill for the better Administration of Justice now brought into Parliament, may be passed by your Right Honorable House; and that such other measures as may seem meet, may be adopted by your Right Honorable House for relieving the suitors in Chancery and the subjects of these realms from the present defects in the Court of Chancery, and for administering relief in Equity with greater economy and expedition. And your Petitioners, &c.

NOTICES OF NEW BOOKS.

Serviens ad Legem: A report of the proceedings before the Judicial Committee of the Privy Council, and in the Court of Common Pleas, in relation to a warrant for the suppression of the ancient privileges of the Serjeants at Law, with explanatory documents and notes. By James Manning, Serjeant at Law. London: Longman & Co. 1840.

This is a minute and very accurate report of the interesting case of the serjeants, which has terminated in restoring their ancient right of exclusive audience in the Court of Common Pleas sitting in Banc, except as to cases in which other barristers had been previously retained. The whole of the arguments before the Judicial Committee of the Privy Council are stated *verbatim*, with the incidental remarks of the judges of that tribunal. These are followed by the masterly argument of Mr. Serjeant Wilde (now the Solicitor General) before the Court of Common Pleas, with the judgment of the Lord Chief Justice thereon, and all that passed on behalf of the bar generally.

The notes of Mr. Serjeant Manning are (as might be expected) full of ancient and curious learning; every thing in any respect bearing on the origin, history, and privileges of the serjeants has been carefully adduced. The appendix also is an equally valuable part of the work; it contains many reports, documents, and articles of professional interest, from the earliest down to the present times, which cannot fail to be highly acceptable to every one who deserves the name of lawyer, or feels an interest in the modes and forms of administering justice in ancient times.

It is particularly gratifying to notice the labours of a gentleman of Mr. Serjeant Manning's well known learning and accuracy; and, in common we believe with all who entertain a proper regard for their profession, we feel obliged to him for the great pains and research which he has bestowed on the subject. The pressure of matters of immediate interest will not permit us to make any extracts at present from the antiquarian parts of the work; but we cite the following to shew the present state of the practice regarding the temporary audience of barristers, not of the degree of the coif. At the conclusion of his judgment, on Tuesday the 21st January 1840, the Lord Chief Justice said, "Whilst we declare our opinion to be that under the constitution of the court, we ought to allow the serjeants the exclusive liberty of practising, pleading,

and being heard in this court during term-time; it is with this reserve that all those barristers who are not of the degree of the coif, shall be heard in such business as they are at present engaged in until the same be brought to an end."

PRACTICAL POINTS OF GENERAL INTEREST.

LIABILITY OF TRUSTEE, AND POWER TO RETIRE.

IN our eighteenth volume, p. 385, we called attention to the liability of trustees, showing that in fact what is called 'good nature,' is held to be a crime in courts of equity. We have now to shew a remedy which a trustee, or his representative, may have after having done one of these good-natured acts.

By a marriage settlement freeholds and money in the funds were settled upon the wife for life, the husband for life, and the children of the marriage; and the settlement contained a power for the trustees, with the direction in writing of the husband and wife, to lend the trust monies to the husband on the security of his bond. The trustees lent a part of the trust monies to the husband on his promissory note, and without obtaining the consent in writing required. The trustees having died, a bill was filed by the executors and devisees of the will of the surviving trustee, to have the trust fund restored; and Lord Langdale, M. R. held that such a bill was maintainable. "I own I am rather surprised," said his lordship, "to find it alleged, even in argument, that persons placed in the situation of these plaintiffs, are not entitled to apply to this court for relief, at any moment a bill might have been filed against them by the wife or daughter by their next friends, calling on them as representing the estate of the testator, to replace that which had been lent to the husband; and I conceive it to be clear that they had a right to proceed against the husband for the purpose of having this matter set right." His lordship also expressed his opinion as to whether a trustee might obtain costs on retiring from the trust. "The opinion I entertain on this subject is this, and I have often stated it, that if a trustee undertakes the performance of a trust, he is not entitled, as against the estate he has undertaken to protect, to exercise a mere caprice, and without any assignable reason say that he will no longer continue a trustee. On the other hand, if the trustee finds the trust estate involved in intricate and complicated questions, which were not, and could not have been in contemplation at the time when the trust was undertaken, he has in consequence of that change of circumstances, a right to come to the court to be relieved, and the court will judge whether the circumstances were such as to make it fair for him to decline acting longer upon his own responsibility." *Greenwood v. Wakeford*, 1 Bea. 576; see also *Darkes v. Martyr*, 1 Bea. 525.

PROPOSED SITE OF THE NEW COURTS.

WE presume that if a site for the Superior Courts were about to be chosen in the present state of the Metropolis, and with reference to the place where the law is not only studied, but practised, there could be no doubt that Palace Yard would *not*, and that the neighbourhood of the Inns of Court *would* be chosen. The rebuilding of the Houses of Parliament, and the manifest improvement which would be effected by removing the small and inconvenient Courts which form an excrescence to Westminster Hall, afford a peculiarly favourable opportunity of doing *now* what would have been done if the same circumstances had existed when the Courts were established.

We shall not at present enter at any length into the consideration of the objections which have been raised to the proposed removal of the Courts to Lincoln's Inn Fields, but we may observe on one or two points we have heard urged.

First, there is the feeling of veneration for Westminster Hall, as the place where justice was administered by the judges during several centuries. We recollect, indeed, that the Lord Chancellor, and the judges of the Court of King's Bench actually sat at the upper end of the Hall, in very inconvenient Courts partitioned off from the Great Hall, but we suppose that no one would wish to have that state of things restored. Subsequently to that time the King's Bench sat in the Guildhall or Sessions House opposite Palace Yard. Then the Master of the Rolls, and the Vice Chancellor have from time to time been moved about wherever a hole or corner could be found sufficient to get through the business of the day. Even now the present range of ill-constructed and inconvenient Courts form no part of Westminster Hall, but are outside the wall, partly on the site of the former Coffee Houses, which were of considerable convenience to persons attending from a distance, now driven to the other side of Palace Yard.

It may fairly be said therefore, that the chain of historic recollection is broken, and that we are free to choose the most eligible and convenient site. Good laws, well administered, are the proper object of reverence; and if an imposing seat of justice be requisite, it will not be found in any of the present court rooms. We have no doubt that the Architect, under the direction of the Judges, and aided by the Bar, with the So-

licitors and the principal Officers of the several Courts, will combine the useful with the grand in the proposed building.

Next we hear a few persons "babbling of green fields," and moaning over the loss of the verdure and foliage which at present delight them in what we propose to call Westminster Square. It looks favourably for the cause that opposition like this is deemed worth while to bring forward.

The more serious opposition will be that of the M.P. Barristers; but it is obvious that a Parliamentary Bar must be completed, if not already sufficiently numerous, and it will be the interest of the public and the duty of solicitors to bring about this arrangement. The Bar is extensive enough to enable the suitors to make such a selection as will entirely remove this difficulty. It is a great grievance that the business of the Courts, even whilst located near the Houses of Parliament, is impeded by the absence of counsel on parliamentary matters. The entire separation of these different branches of practice would be of great advantage in the administration of justice.

A WORD AS TO OURSELVES.

WE trust we have not conducted this work for a period of nearly ten years, without establishing a spirit of kind feeling between ourselves and our readers. We have indeed received many marks of it, and having laboured hard to deserve it, we feel not a little desirous to retain it. We cannot pretend to very great things, but we do lay claim to having carried on "*THE LEGAL OBSERVER*," as the representatives of the profession, in a candid, fair, and honourable manner, and to having given every one his due. It is indeed this conduct, we are persuaded, which, more than any other thing, has gained for us the standing and confidence that we have obtained; and we are quite sure we cannot be deprived of it except by our own fault.

It is not to be supposed, however, that our success should not have provoked competition; nor have we had to regret it. We have no objection to a rival work, conducted in a fair and honourable manner. We are not sure that in fact it injures us in any way; and we are quite sure that it is beneficial to the profession and the public. It has been our fate to see many of

a certain kind of rivals in our time, which have, however, after lingering two or three years, dropped off.

First came a work called "*The Modern Jurist*," which, after going on for some time, was heard of no more. Next came "*The Legal Examiner*," which lived some three or four years, but gradually pined away, and died. Out of its ashes came "*The Westminster Hall Chronicle*," which soon followed its predecessor into the grave. Last of all, came "*The Jurist*;" and we shall see whether it will better its fortunes by the course which it has pursued against this Work. Its proprietors, without any notice to the proprietors of "*THE LEGAL OBSERVER*," snapped an *ex parte* injunction from the Vice Chancellor on Saturday last, on the ground that we had pirated their reports.

We can solemnly declare, as we have solemnly sworn in the pending suit, that no person connected with this Work has ever copied a single line from "*The Jurist*;" that we have strictly kept faith with our readers, and that all the Reports of the Cases in the Superior Courts which have appeared under that head have been reported by Barristers of the several Courts expressly for this work: that we have not gone to unknown or irregular sources for our reports, but have been favoured with them from gentlemen long known to the Profession as regular law-reporters. It would have been very easy to have got a long list of names: we judged it better to obtain the aid of three gentlemen, to whom we might look for a supply of cases in all the Courts, they taking such steps as they thought proper to obtain assistance. These gentlemen are: Mr. CHARLES CLARK, of the Middle Temple, Mr. FINNELLY, of the Middle Temple, and Mr. DOWLING, of Gray's Inn;—all Barristers of long standing, and all experienced law-reporters. From these gentlemen, and from these gentlemen alone, have we ever, of late years, received any reports; and we thus prove that we have kept faith with our subscribers. In the progress of each year we have given reports of about *three hundred cases*, and the course we have pursued has benefited the profession in another way:—It has obliged the other reporters to expedite the publication of their reports; so that

instead of being almost all in arrear, as they were when we commenced our Work, they are now all tolerably punctual and early in their publication. In conclusion, we believe it will be found, that the more the matter is examined, the more it will redound to the credit of this work; and we will spare no pains to continue to deserve the success we have obtained.

We have lost no time in giving instructions to dissolve the injunction so obtained, but we fear we shall not be able to lay the result before our readers in the present Number.

NEW BILLS IN PARLIAMENT.

MARRIAGES ACT AMENDMENT.

By this bill it is proposed to amend the 4 G. 4, c. 76, and 6 & 7 W. 4, c. 85, by restraining marriages from being solemnized out of the district in which one of the parties dwells, *unless* there shall not be within the district in which the parties or either of them dwell, any place of religious worship, according to the form by which the parties desire to be married, registered for solemnizing marriages, according to the late statute.

The superintendent registrar is therefore to be prohibited from granting certificates for marriage out of the district where the parties dwell. But on notice by the party of their being no registered building according to their form of worship, he may issue his certificate for a marriage at the nearest building so registered.

SUPERIOR COURTS.

Lord Chancellor's Court.

ASSIGNABILITY OF GOVERNMENT PENSIONS.

A. assigned to B. for valuable consideration, an annual sum granted to him during pleasure, as compensation for an office which he had held, and which was abolished; and he subsequently took the benefit of the Insolvent Debtors' Act.

The Lord Chancellor affirmed an order made by the Vice Chancellor, upon motion by B. to restrain the agent of the grantors of the pension from paying any monies in his hands for that purpose to A. or any person claiming under him, until the title to it should be ascertained at the hearing of the cause.

This was a motion to discharge an injunction granted by the Vice Chancellor under the circumstances mentioned in the report, *ante*, Vol. 19, p. 380, and in a more full statement of the facts, p. 459, of the same volume. Some additional facts are stated in the Lord Chancellor's judgment.

Mr. Wigram and Mr. Coleridge for the motion, said that there was no money in the hands of the Receiver General to which the injunction could apply, and if the parties carried this contest much farther, they would lose everything; for the Lords of the Treasury had such an objection to assignments of pensions that they always stopped the payment when they discovered they had been assigned. The plaintiff had not given to the Lords of the Treasury any notice of his incumbrance, except by an enrolment at the audit office, which in fact was no notice at all. The commissioners of customs had stopped the order to pay the pension, and there seemed no reason to believe that the injunction could be applied to future payments, if any were made.

Mr. Stuart and Mr. Wray were for Sir W. Boothby.

Mr. Richards and Mr. J. H. Palmer, for the plaintiff, maintained that the notice at the audit office was, as the *Vice Chancellor* held, sufficient notice, and that the plaintiff had a right to the money in Sir W. Boothby's hands, if there was any; because it was not within the order and disposition of the insolvent at the time of his insolvency. It was not denied before the *Vice Chancellor* that there was some money in Sir W. Boothby's hands for payment of the pension. The assignees of the insolvent could only become entitled to the payment by the consent of the commissioners of customs, and the special order of the Insolvent Court. But the 30th section of the Insolvent Debtor's Act, relating to reputed ownership, applied expressly only to such property as would pass by the general assignment of the insolvent's goods and chattels; but this pension, by reason of the 29th section, could not so pass.

The Lord Chancellor—There are many points in this case, and some of them present some degree of difficulty. As far as I can bring the facts to decide on this motion, there is nothing whatever in contest between the parties. I think there is hardly any doubt now that there was never any money in the hands of Sir W. Boothby. An application was made to the Vice Chancellor by the plaintiff, claiming by assignment from Browne, who was entitled to this compensation, that Sir W. Boothby, as receiver general of the customs, might be prohibited by injunction from paying over to the assignees (appointed under Browne's insolvency) a sum of money supposed to be in his hands. The Vice Chancellor's judgment goes on the supposition that there is money in his hands; the order is confined to the money actually in his hands, and therefore does not amount to any declaration of right as to future payments payable to Browne, or to some person under him. The assignees, conceiving, as it appears, that the Vice Chancellor gave an opinion which would affect the right to future dividends, apply now to discharge his order. I cannot take notice of what passed in the Vice Chancellor's Court, but only of the order drawn up by the officer of that Court which I am asked to discharge, and that is strictly confined

to money alleged to be in Sir W. Boothby's hands for the quarterly payments (of Browne's pension) for July 1839 and January 1840. Feeling myself strictly confined to the question which that order purports to direct, namely, the security of that fund—I have only to see whether there is evidence before me that this is such a case as would justify that order. The result of the clause of the Insolvent Debtor's Act to which my attention has been directed amounts to this: that these payments do not pass under the general assignment. They are a bounty from the crown to the public, as a compensation to a public officer for an office abolished; and it may, or may not, turn out that, as the office was held during pleasure, the compensation for its loss may or may not be also held during pleasure. It being only an expectancy, it cannot pass to the assignees under the act. If it does not pass to the assignees, it remains still in the disposition of the officer of the Crown, as a bounty payable to the party to whom the pension was originally granted. The provisions of the act enable the assignees of an insolvent, on communication with the commissioners of customs, to make an arrangement by which part of the income may be applied to the payment of the insolvent's creditors; but if not appropriated under such an arrangement it would still remain payable (under discretion, of course) to the individual to whom the pension was originally granted. If that be the true construction of the act—looking at it now only so far as to see if there is reasonable ground for the injunction—I have no doubt it would not entitle the assignees, except under the arrangement between them and the commissioners of customs, to any payments accruing to the party after his insolvency. If there was no such arrangement, and the compensation remained payable at the discretion of the Crown or public officer to the insolvent, and payments of it were actually made after his insolvency to the public officer, (Sir W. Boothby) with directions to him to pay it to the insolvent himself, the question then would be whether that compensation having been assigned (by deed) would not upon his insolvency, be as against him (his assignees under the Insolvent Debtors' Act, being in that view of the case out of the question) a title which this court would interfere to protect. That is a question arising on the state of the parties as they appear on the record and on the evidence, which I think of sufficient doubt and difficulty to make it the duty of this Court to protect this fund, until the title is disposed of. That is all that the Vice Chancellor's order does, and I must feel very clear upon the subject before I could discharge it. I do not express any opinion as to the future payments; but looking only to the quarterly payments in the hands of Sir W. Boothby, with directions from the commissioners of customs to pay them to Browne, I think under the circumstances the Court is bound to protect that money. The result is, that the motion must be refused; but, as it appears that the case was not viewed in the

court below as it ought to be viewed according to the facts as they exist, and as I have reason to suppose the future interests of the assignees and creditors might be prejudiced if a discussion here had not been obtained, I think the costs ought to be costs in the cause. If the plaintiff succeeds as an incumbrancer on the fund, he ought to be paid his costs, either out of the fund, if there be a surplus, or by those who have disputed his title to it. As to Sir W. Boothby, who appears to be a public officer, and to have no interest in the case, I think the appellants ought to pay his costs now, the question being reserved as to who is ultimately to bear those costs.

Tunstall v. Sir W. Boothby and others.—At Westminster, May 13, 1840.

Queen's Bench.

[Before the Four Judges.]

CHURCH-RATE.—PROHIBITION.

[Concluded from p. 73, ante.]

Lord Denman, C. J., delivered judgment.—This is a case which came before this Court on demurrer to a declaration in prohibition, directed to the Ecclesiastical Court of the bishop of London, requiring him not to proceed further against the plaintiff in a suit instituted in that Court for the recovery of a rate which had been imposed on the parishioners of Braintree in Essex by the churchwardens alone, notwithstanding a vote of the vestry had been passed refusing such rate. The declaration and demurrer had raised the question whether the churchwardens had the power to impose such a rate against the declared will of the inhabitants in vestry assembled. In debating the question, the law or doctrine, that by the custom of England the inhabitants of a parish are bound to repair the fabric of the church, has not been disputed. By the civil and the canon law the parsons had been bound to repair the church, and that liability exists in all christian kingdoms except England, where, by the Parliamentary law of the country, the parishioners are required to take on themselves that duty. This is clearly laid down in numerous authorities. The period at which the earliest church rate was imposed has not been distinctly shewn, but still it may be assumed that the expenses required to be incurred for the repairs of the church have always been levied upon the parishioners at large. That indeed is a matter which has been treated as a settled point of practice and law. This proposition has not been denied on the part of the plaintiff; nor, on the part of the defendant, has it been denied that to a certain extent the ecclesiastical jurisdiction does not exclusively apply to matters of church rates; nor that the expenditure of the money thus levied is not entrusted exclusively to the discretion of the churchwardens, subject only to spiritual censure. The question which now arises is whether churchwardens are empowered to impose a rate at all events, and whether they have authority to impose it, and may, if

they neglected that duty, be compellable by ecclesiastical censure to perform it. If they do not possess such a power and yet are subject to such a liability, there would be, so far as the churchwardens are concerned, a wrong without a remedy; an argument in itself strong against the rule contended for in this case, since such a state of things is abhorrent to the law of England. The wrong would be the neglect of the parishioners to afford funds for the repairs of the church: the remedy for that wrong now sought to be enforced by these proceedings in the Ecclesiastical Court, is to enable the churchwardens to obtain the funds by their own authority,—a remedy which would itself be a wrong, since its object would be to make the churchwardens tax their fellow-parishioners without it being at all clear that they had any power to do so. It is said that the law in ancient times supplied a remedy which had always been found effectual, and that the threat of Ecclesiastical censures had always been sufficient to procure the discharge of the duty which, by universal consent, the law had thrown on the parishioners. The interdict which suspended Ecclesiastical rites punished a refractory parish, and the very fear of its imposition prevented the necessity of having recourse to any other method to procure the funds necessary for the support and maintenance of the fabric of the church. It is very probable that the denunciation of such a punishment would have been adequate to such a purpose in ancient times, and that alone may have prevented the having recourse to some of those means the inefficiency of which has been proved by more recent experience. It is said, on the one hand, that the denial of the right to regulate these matters by Ecclesiastical authority alone involved the most dangerous consequences to the church; while on the other hand it is asserted that the power of the Ecclesiastical Court to compel the churchwardens to perform a duty to which their legal powers are inadequate, must involve them in consequences of the most serious and extraordinary kind. It is confessed that they are bound by law to repair the fabric of the church, and yet it is equally clear that without the consent of the parishioners or without the power in themselves to impose a church rate they are left without the means to perform the duty thus cast upon them. That argument would be entitled to great consideration, subjecting as it did the churchwardens to great personal liability, and possibly to great personal inconvenience, when they were destitute of the funds necessary for the support of the fabric of the church, and were unable to supply, by their own authority, any of the wants of the church, to the supply of which the church rates were legally liable. If there are no church rates to repair the church, and yet the churchwardens are liable to actions for any injury which passengers may sustain by the falling of the walls of the church, they would in fact be liable to repair the church out of their own private property. This was too great an injustice to conceive them to be subjected to by the provisions of the law. If

there is any general practice for them to make advances for the repair of the church, it is clear that the law never could intend that they should not be entitled to demand repayment. If it were otherwise, the law would be liable to be charged with manifest oppression and injustice. If the liability really does exist, its existence would tempt the Courts to imply a vested right in the churchwardens of England to tax the inhabitants to obtain that reimbursement which would otherwise be denied them. But there is no instance in the law of the churchwardens possessing any such vested right. While, on the other hand, numerous authorities establish the proposition that the churchwardens are only liable in respect of the money they actually had in their hands. The cases of their liability have gone on the assumption of their being possessed of funds. The principle of the Ecclesiastical law with respect to the duty of these officers is therefore qualified by that supposition. The duty of establishing such a right and such a liability in the churchwardens is, in the present instance, cast upon the defendants in prohibition. Now, how is that duty discharged? The law requires it to be clear to demonstration that a tax is lawfully imposed before it will allow that tax to be levied. The power asserted here to tax the parishioners is not clearly established. Such a power is not shown to exist by the words of any statute, by the common law, nor by custom. Nor is there anything to shew that a church rate can be properly imposed upon the inhabitants of a parish except by the inhabitants in vestry assembled. There is an expression in Gibson's Codex that a church rate might lawfully be imposed by the churchwardens together with the parishioners assembled in vestry, but in that author there was no declaration to be found that it might be imposed by the churchwardens alone, without the consent of the parishioners. And though it is distinctly laid down by Lord Chief Justice North in *Rogers v. Deverant* that "the Spiritual Court may compel parishioners to repair their parish church if it be out of repair, and may excommunicate every one of them till it be repaired," he never stated that the churchwardens were bound to make those repairs with funds of their own, or that they had the power in themselves to tax the parishioners for such a purpose. If such a power existed in the churchwardens, it is impossible to suppose that it would not have happened to be called into exercise before the present day; that it would not have happened that a churchwarden might wish to impose a rate where a rate had been altogether refused, or one of an insufficient amount had alone been granted. But it may be supposed, however improbable is the supposition, that during the great contests between the people and the episcopal powers in this country, when the parishioners refused the rate the churchwardens uniformly took part with the parishioners. Even that supposition, however, will

not advance the argument for the defendants in prohibition. The parish church must have been left without repair, and if the churchwardens were amenable to the Spiritual Court for the non-repair of the church, and at the same time enjoyed the power of taxing the parish towards the necessary expences of such repairs, nothing could have been more simple, direct, and complete than the proceedings which might then have been taken against the churchwardens. The rate must then have been imposed. But instead of taking that course so utterly free from objection, the bishops adopted a new and unheard of species of authority, under the name of a "commission to levy rates," and they did this to secure the performance of a duty which it is now argued they might have compelled the churchwardens by the ordinary process of law to perform. If the mere necessity for doing an act can create the machinery by which it is to be done, that commission would have been perfectly lawful. But it was not lawful, and if the bishops could have attained the object in view through the enforcement of the sole authority of the churchwardens, and against the will of the parishioners, as it is now asserted, could lawfully have been done, the scandal of an unconstitutional attempt would not have been incurred. At that time as well as at the great epoch of the reformation, the subject underwent frequent discussion, but in no instance has the existence of the power now broadly asserted, been claimed for the church, by any of the learned text writers on ecclesiastical subjects. The Court has most carefully examined all the numerous cases cited in argument, but has found them for the most part to bear but imperfectly upon the question; and does not feel it necessary to make comments on them, beyond those which were made in the course of the discussion at the bar. There are however one or two cases which are exceptions to this rule, and which do require a moment's notice. These I shall now quote: The first is anonymous,^a and is reported in these terms: "Moved for a prohibition to the Spiritual Court, for that they sue a parish for not paying a rate made by the churchwardens only, whereas by the law the major part of the parish must join. *Twisden*.—Perhaps no more of the parish will come together. *Counsel*.—If that did appear it might be something." That is the whole report. There is no judgment of the Court, and that case therefore determines nothing. The other is also an anonymous case,^b which is called *Burfield v. Jones*, in subsequent editions. There it was said, that "the churchwardens, if the parish was summoned, and refused to meet or make a rate, might make one alone for the repairs of the church if needful, because that if the repairs were neglected, the churchwardens were to be cited, and not the parishioners. And a day was given to shew cause, why there should not go a prohibition." That again is not a final decision, but is a mere *dictum* on granting a rule to shew cause.

^a 1 Mod. 194.^b 1 Mod. 79, pl. 41.^c 1 Ventr. 267.

Then comes *Maynard v. Bland*,^d and then a case decided by Sir W. Wynne from the Consistorial Court of Peterborough.^e In the latter case it appeared that the vestry had been called together, and had refused to make a rate, and the law was laid down by Sir W. Wynne to this effect: That under such circumstances, if the parishioners did not make a rate, the churchwardens had a right to make it themselves. In the present case, which has been before Dr. Lushington, that declaration of the law was commented on, and the learned judge said, that sitting where he did, he felt bound by the superior authority of Sir W. Wynne, but at the same time he commented on it in such a manner as to shew that in his opinion it was not to be maintained in point of principle. The question thus undecided has now come before this Court, and amounts in fact to neither more nor less than this:—Can an ecclesiastical judge make the law? If the conclusions of such a judge are made from reason and principles, they were liable of course to be considered in argument, and to have their proper force estimated and determined. But it must be confessed that a doctrine so novel and important never was promulgated with so little effort to conciliate opposing arguments. The point thus arbitrarily settled, was not discussed at all—neither reason nor authority was vouched in its behalf, but the whole proceeding bears the appearance, and perhaps truly, of being a proceeding of an *ex parte* kind. With all the respect that is justly due to the venerable person from whom that judgment proceeded, this Court feels bound to declare, that it does not appear to be justified in principle, nor to rest on a well-settled basis of recognized authority. It has been supposed that in a subsequent case, Lord Stowell expressed a similar opinion, but upon inquiry that does not appear to be the case. The conclusion therefore at which this Court has arrived, is that the Court Christian has been in error in overruling the defensive allegation put in by the parishioners, to the effect that the rate was a nullity, as it had been made against the wishes of the majority of the vestry, and made by persons who had no authority to make it. The Court Christian therefore, in proceeding to give judgment to enforce a rate illegal in its very formation, has clearly exceeded its jurisdiction, and prohibition must be awarded. This disposes of the first point in the case: Then comes the second point, that even supposing the rate to be invalid, still a prohibition ought not to issue, because this is a matter in which the Court Christian had exclusive jurisdiction. This Court is thus called on to state the principle of the proceeding by prohibition. That principle is in itself clear, though the application of it may sometimes be difficult: it is this, if any inferior court entertains a suit which appears in the outset by the libel itself, or by any of the subsequent proceedings to be beyond its

jurisdiction, the Courts at Westminster have the authority, and were bound by duty to interpose. *Lord Camden v. Home*,^f is not opposed to this doctrine, nor is *The King v. Cole-ridge*, nor *Chesterton v. Farmer*, nor any other authority referred to in the discussion of those cases. The argument therefore that in ecclesiastical matters, the Ecclesiastical Court alone has jurisdiction, and the Common Law Courts have none, is founded in error. The question then is, what defects authorize and require the Courts of Common Law to issue writs of prohibition? They must be in every case of such a nature as to shew a want of jurisdiction in a particular court to decide the particular matter brought before it. In what ever stage of the proceedings that want of jurisdiction is shewn to exist, either by the crown or by a subject, the Courts of Common Law are bound to interfere. The erroneous construction of an act of parliament is one of these cases: the imposition of a tax without lawful authority, is another and such a tax must a church rate be considered, which is made by parish officers, not only without the concurrence of parishioners, but in defiance of their refusal to make the rate. This is not an irregularity which can be waived or cured, leaving the principal matter complete in substance, although somewhat informal in circumstances. It makes the rate altogether invalid. For these reasons we feel bound to say, that the court below has exceeded its jurisdiction, and that judgment must now be given for the plaintiff in prohibition.

Judgment for the plaintiff.—*Burder v. Veley and others*, E. T. 1840. Q. B. F. J.

Common Pleas.

REPLEVIN.—SHERIFFS OF LONDON.

In an action on a replevin bond, the declaration alleged that replevin had been granted by M. M., one of the sheriffs of the city of London, and that the bonds having been taken by him, had been assigned by him to the plaintiff: Held, upon general demurrer, that the declaration was good, and that it was unnecessary that the second sheriff should be alleged to have joined in the transaction.

This case came before the Court upon a demurrer to the plaintiff's declaration. The declaration alleged that the goods of the defendant Farden had been seized by Sir Moses Montefiore, Knt., one of the sheriffs of the city of London, for money due to the plaintiff for rent; and that, being so distrained, the defendant Farden made his plaint before the said Sir Moses Montefiore, Knt., so being one of the sheriffs of the said city of London, and prayed him &c. that the said goods should be replevied by him, &c.; that the defendants subsequently entered into the requisite bond, acknowledging themselves bound to the said sheriff &c., but neglected to appear in the Court of Hustings therein mentioned, although the said Court was daily held in the Guildhall

^d 3 Phill. 501.

^e *Gardern v. Selby*, decided in 1799.

^f 4 Term. Rep. 382.

of the city of London, before the Right Hon. Sir John Cowan, Bart., Lord Mayor of the said city, Sir George Carroll, Knt., and Sir Moses Montefiore, Knt., sheriffs of the said city, whereby the said bond became forfeited to the said Sir Moses Montefiore, so being one of the sheriffs of the said city. The declaration, in conclusion, alleged the assignment of the bond by Sir Moses Montefiore to the plaintiff.

To this declaration the defendant demurred generally.

Goulburn, Serjt., in support of the demurrer.—The question which arose upon these pleadings was whether, there being two sheriffs of the city of London, it was competent for one of them to execute personally the duties of the office, and it was submitted that although in cases of necessity such a course had been permitted to be adopted, when that necessity did not exist, one of the sheriffs was incompetent so to act. The whole power possessed in these cases by the sheriffs arose upon the statute of Marlbridge, 52 Hen 3, c. 21, and upon the subsequent statute of 11 Geo. 2, c. 19, s. 23, but upon the terms of the provisions of those acts there was nothing to authorise one of the sheriffs to grant replevin. There were no authorities distinctly to the point, but as it appeared from cases of bail bonds that the two sheriffs had one common seal, it must be taken that the act done was the act of the office, and not of the particular officer.

Peacock for the plaintiff, said, that it appeared from *Bobun's Privileges of London*, pp. 236, 237, that it had been the immemorial practice of the sheriffs of London to grant replevins separately. From the case of *Rich v. Sir Thomas Pleyer*, Skinner 104, it appeared that they were to be considered as distinct individuals.

Goulburn, Serjt., replied.—The custom was not certified to the court, and in the absence of any proof of its existence, they would not permit it to prevail. [*Maule*, J., cited *Wilson v. Hobday*, 4 Mau. & Sel. 120.]

Tindal, C. J.—It appears to me that sufficient has not been shewn to us, to impeach the validity of the bond set out upon the record. It is well known, that at an early period of our history, vast difficulties were thrown in the way of the common people of this country, by repeated distresses being made upon their goods, and by the statute of Marlbridge, a more ready remedy was given to them than before existed, for the provisions of that act were evidently intended to afford a *festinum remedium*—as large, and as ready a remedy as could be given. The shrievalty of London, it is well known, is different from that of the county of Middlesex, for the same two persons who are the sheriffs of the former, constitute the office of the sheriff of the latter; and the question is, whether one of them is so far a different officer from the other in the city of London, that for the purpose of granting this *festinum remedium*, he may give a replevin. If he can, there is an end of the case,

because the statute of Geo. 2, says, and means to point to the conclusion, that the bond may be taken by the officer who grants replevin. Then is the act done by one sheriff a valid act. That the two sheriffs are considered as separate officers for some purposes, appears from the authorities before the Court, for in the case in *Skinner*, one of the authorities cited by the learned judge is that of a *habeas corpus* directed to the sheriffs of London; and it was said, that as they had separate compters, he who had the prisoner in his custody should answer the writ. The same principle is to be found in *Bobun's Privileges of London*, p. 311, which has been cited, and which is a book of some authority, although I certainly do not mean to say that we should receive its contents with that confidence with which we should treat customs certified to us by the mouth of the recorder. In p. 236 of the same book, the practice of replevying is set out, and that appears to warrant the adoption of the course here taken. I think, therefore that the allegations in this declaration are sufficient, and that the plaintiff is entitled to judgment.

Coltman, J., and *Erskine*, J., concurred.

Maule, J.—I also think that the plaintiff is entitled to judgment. The policy of the statute of Marlbridge was that all persons should receive a speedy remedy. Here there are two sheriffs, and the name of each of them would satisfy the precise term of that statute. The statute of the 1 & 2 William & Mary, c. 12, provides that sheriffs of shires may grant power under certain conditions to certain persons in their shires also to grant replevins, but that does not apply to cases like this, where the sheriff is sheriff of a city which is made a shire. The object of the provision clearly was to extend the means of securing speedy remedy, and no doubt the reason why it was not made applicable to sheriffs of cities was that in such cases there were two sheriffs to apply to, each of whom might grant replevin, in the same way as each of the agents of a sheriff of a shire might. The statute of Geo. 2, provides that all sheriffs granting replevins may assign the bonds under their hands and seals, and that provision assumes that the assignment and replevin are to be made by one officer. In London the office of sheriff is performed by two persons, but I cannot say, that the assignment must be by both of them. I think the case of *Wilson v. Hobday* very material, if not decisive on this point; and this case certainly falls within the line of reasoning upon which that decision was arrived at. According to that case you ought to presume every thing possible, in addition to what is stated in the declaration, consistent with its allegations, to exist, in order to sustain it.

Therefore, not merely on the ground that by the statutes of Marlbridge and of Geo. 2, this authority is conferred; but that if it is not so given it must be presumed, according to the case of *Wilson v. Hobday*, I conceive that judgment must be given for the plaintiff.

Judgment for the Plaintiff.—*Thomson v. Farden and others*, T. T. 1840. C. P.

CAUSE LISTS, TRINITY TERM, 1840.

Lord Chancellor.—Vice Chancellor.

Judgments.

Attorney Gen. v. Pearson, *appeal*
 Ward v. Painter, *appeal*
 Hawksworth v. Brammell, *ditto*
 Easum v. Appleford, *ditto*
 Swain v. Pratt, *exons. & fur. dirs.*
 Maund v. Allies } *causes*
 Ditto v. Cooke }
 Attorney Gen. v. Earl of Stamford, *cause*
 Musgrave v. Newton, *cause*
 Att. Gen. v. Boston, 2 *appeals*
 Wormald v. Mackintosh, *appeal*
 Mortimer v. Fraser, *ditto*
 Brent v. Brent, *cause*
 Davies v. Cooper, *ditto*
 Pym v. Lockyer, *appeal*
 Williams v. Owen, *ditto*
 Heighington v. Grant, *ditto*
 Burrough v. Philcox, *fur. dirs. & costs*
 Lozon v. Pryse, *cause*
 Att. Gen. v. Nethercoat, *cause P.C.*

Pleas and Demurrers.

S. O. Foley v. Hill, *plea*
 Eades v. Pearce, *ditto*
 Seddon v. Connell, 3 *demurrers*

Re-hearings and Appeals.

Abated { Sherwood v. Storer, *appeal*
 Tucker v. Stone, *ditto*
 Blanchard v. Cawthorne, *do.*
 Ashton v. Milne, *ditto*
 Gambia v. Gambier, *appeal*
 S. O. Barratt v. Howard, *ditto*
 „ Attorney General v. Brentwood, *appeal*
 „ Dixon v. Dixon, *appeal*
 „ Dearman v. Wyche, *ditto*
 5th June—Attor. Gen. v. Fishmongers' Compy.—*ditto*
 (Knesworth's Charity) }
 5th June—Attor. Gen. v. Ditto (Preston's Charity) } *ditto*
 Maugham v. Vincent, *ditto*
 Turner v. Borlase, *ditto*

Trinity Term, 1840.

Wednesday, 27th May—Motions
 Thursday, 28th May

Causes, further Directions and Exceptions.

Abated { Newham v. Timbrell }
 Villers v. Flint }
 Pelham v. Towne }
 Knott v. Chamberlain }
 Price v. Smith }
 Scaife v. Scaife }
 Orred v. Shuttleworth }
 Leonard v. Chambers }
 Abated 1829 }
 Abated 1830 }

Garrett v. Cockerell }
 Dovehill v. Barnett }
 Codrington v. Lyne }
 Delfosse v. Butler }
 Bailiff, &c. of East }
 Retford v. Cottam }
 Penrudduck v. Watts }
 Morrison v. Roberts }
 Dixon v. Robinson }
 Brown v. Gaubert }
 Stone v. Stewart }
 Woodman v. Bostock }
 Bolton v. Barnes }
 Baring v. Theobald }
 Kynaston v. Capper }
 Edwards v. Rutherford }
 Roberts v. Lee }
 Rimer v. Miffen }
 Clarke v. Clarke }
 Adams v. Brine }
 Best v. Bayley }
 Ponget v. Chambers }
 Janaway v. Williams }
 Ballard v. Triggs }
 Morris v. Wilson, *fur. dirs. & costs*
 Hamilton v. Williams }
 Yarnold v. Yarnold, *exons., fur. dirs. & costs*
 Underwood v. Cole }
 Bosanquet v. Burnand, *fur. dirs.*
 Weeks v. Baron }
 S. O. Hancock v. Teague, *exons.*
 „ Nochells v. Lingham, *ditto*
 „ Barratt v. Howard, *exons.*
 Abated { Lacon v. Waterton }
 Cloberry v. Herring }
 Folland v. Lamotte }
 S. O. Harvey v. Leaf }
 S. O. Arnold v. Hardwicke }
 Abated Hinxman v. Sadler }
 S. O. Griffith v. Richards }
 „ Reece v. Taylor, *exons. 2 sets*
 „ Bryant v. Beale, 3 *causes*
 Abated Flight v. Lake, *exceptions*
 S. O. { Wilson v. Beddard }
 Ditto v. Williams }
 Abated Cochrane v. Curlewis }
 S. O. Weatherall v. Brown, *fur. dirs. & costs*
 S. O. Fermor v. Breeds }
 Abated Stiff v. Simmonds }
 S. O. Trought v. Trought }
 Abated Griffith v. Browne }
 S. O. Edward v. Lloyd }
 Abated Sewell v. Murray }
 Abated Manistie v. Vines }
 S. O. Hussey v. Bickerton }
 Abated Richards v. Commis }
 S. O. Heaton v. Blair, *exceptions*
 Abated Phillips v. Edwards }
 S. O. Clough v. Bond }
 Abated Att. Gen. v. Laslett }
 „ Powell v. Bettiss }

„ Woodforde v. Woodforde, 2 *causes*
 „ Bowers v. Sherman, *fur. dirs. & costs*
 „ Rawlings v. Solomons }
 „ Hill v. Stephenson }
 „ Gordon v. Robley }
 „ Fox v. Beedham }
 „ Gooch v. Wilson }
 „ Barton v. Jayne, *at defendant's request*
 „ Shale v. Hodson }
 S. O. L. C. Swaine v. Pratt, *fur. dirs.*
 Abated Hurrell v. Tarn }
 „ Haylar v. Field }
 „ Barton v. Jayne }
 L.C.S.O. { Sharwood v. Maine }
 to amend { Furze v. Sharwood }
 S.O. Neate v. Pink }
 L. C. { Jackson v. Pickering }
 „ Ditto v. Ditto, *by order*
 S.O.L.C. Davison v. Cutler, *fur. dirs.*
 Abated Orton v. Richdale }
 „ Griffiths v. Aldersey, *fur. dirs. & costs*
 Abated L.C. Earl of Falmouth v. Alderson }
 Abated L.C. Temple v. Duke of Buckingham }
 S.O. L.C. Lewes v. Tipton }
 Abated Breeze v. Hawker }
 „ Long v. Thomson }
 L.C. Slater v. Rumsey }
 Abated Robson v. Noel }
 S.O. Loftus v. Thomas, *exons.*
 Abated Chambers v. Green }
 Abated L.C. Wegg v. Ld. Petre, *at request of defendant*
 S.O. L.C. Wartnaby v. Shuttleworth }
 Abated Burnett v. Booth }
 „ Willatts v. Marchant }
 Abated L.C. { Jones v. Roberts }
 „ Jones v. Jones }
 S.O. L.C. Langley v. Fisher }
 V.C. { Ellis v. Attorney Gen. *fur. dirs. & costs*
 „ Pearce v. Robinson, *by order*
 V.C. Watkins v. Brent, *at defendant's request*
 „ Melville v. Preston }
 S.O. V.C. { Etecon }
 „ Melville v. Preston }
 V.C. Gumersall v. Ansted, *fur. dirs. & costs*
 „ Houghton v. Houghton }
 „ Hodgkinson v. Walley }
 „ Logan v. Smith }
 „ Sidney v. Ranger, *exons.*
 „ Turner v. Trelawney }
 Abated L.C. Campbell v. Fleming }
 S.O. L.C. Wildes v. Davies }
 „ Swan v. Bowden }

- V. C. St. John v. Champness, *exs.*
 „ Thomas v. Swanwick, *fur. dirs. & costs*
 „ Barnwell (pauper) v. Cooke, *at defendant's request*
 „ Brown v. Davenport, *exons. fur. dirs. & costs*
 V. C. { Hunter v. Judd, *fur. dirs. & petition*
 „ Ditto v. Ditto, *cause*
 „ Pitman v. Lockyer
 „ Taylor v. Fisher
 „ Graves v. Burgess, *at defendant's request*
 „ Milner v. Singleton
 „ Crowfoot v. Mander
 „ Holroyd v. Jackson
 „ Attorney Gen. v. Stone
 S.O. L.C. { Pearce v. Brook
 „ Ditto v. Bryan
 L. C. Williams v. Vanhouse
 „ Ashbee v. Ashbee, *fur. dirs. and costs*
 „ Williams v. Corbet, *exceptions, 3 sets*
 „ Walton v. Morritt
 „ Hobby v. Collins
 „ Pritchard v. Pritchard
 „ Miller v. Little, *exceptions*
 Abated L.C. Bryan v. Twigg, *do.*
 L. C. Bazalgette v. Kirlew
 „ West v. Funge
 „ Hull v. Radcliffe
 Abated L.C. Emmott v. Brown-john
 L. C. Salter v. Partridge
 „ Ackers v. Shakspear
 „ Tapscott v. Newcombe
 „ Matthews v. Wyburn
 „ Caldecott v. Caldecott
 „ Westover v. Foster
 „ Groom v. Chambers
 Abated Nail v. Punter
 L. C. Webber v. Bolitho, *at req. of defendant*
 „ Wait v. Horton
 „ Marshall v. Marsh
 „ Isaac v. Russell
 „ Boys v. Trapp
 „ Loveland v. Maxey
 „ Tarbock v. Martin
 „ Jervoise v. Winn, *exceptions, 2 sets*
 „ Ball v. Barber, *exceptions*
 „ Bullivant v. Taylor
 „ Marshall v. Marsh
 „ Wood v. Lambirth, *exons. & fur. dirs.*
 „ Grant v. Hutchinson
 „ Hurle v. Sweet, *fur. dirs. & costs*
 „ Peacock v. Stockford, *ditto*
 „ Metcalfe v. Warrington, *do.*
 „ Hulme v. Hulme
 „ Holmes v. Upton
 „ Field v. Churchill
 „ Logan v. Baines
 „ Crutchley v. Gardner
 „ Rogers v. Frank
 V. C. De Beauvoir v. Rhodes
 „ Murrell v. Owen
 „ Robinson v. Milnes
 „ Inge v. Inge
 „ Coulton v. Middleton
 „ Joyce v. John
- V. C. Edmunds v. Nixon
 „ Smith v. Poole
 „ Parry v. Pugh
 „ Perfect v. Reynolds
 „ Herring v. Cloberry
 „ Bailiffs of Bridgnorth v. Collins
 Williams v. Strelly
 Child v. Knight
 Curteis v. Kenrick, *fur. di-s. & costs*
 Tatam v. Williams
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 Brandon v. Budgen
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 Buckeridge v. Glasse
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 Robinson v. Myers
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 Hazell v. Pettifer, *fur. dirs. & cts.*
 Jones v. Winwood, *ditto*
 { Wastell v. Leslie
 „ Ditto v. Carter
 { Carter v. Leslie
 Rabbetts v. Reeves
 Eedes v. Eedes, *2 causes*
 Smith v. Smith
 Jackson v. Woolley, *fur. dirs. & costs*
 Ingle v. Neale, *ditto*
 Blathwayte v. Taylor
 Johnson v. Child
 Eyles v. Caulcutt
 Hughes v. Cooks
 Butcher v. Jackson
 Crosse v. Bedingford
 Attorney Gen. v. Glynn
 Nicholson v. Horsey
 Fullwood v. Dowding
 Pelham v. Turner, *at req. of deft.*
 Burdett v. Spencer
 Robinson v. Williams
 Runciman v. Stillwell
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 Mann v. Boys
 Thompson v. Day
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 Brown v. Brown, *fur. dirs. & cts.*
 Moore v. Moore, *exons. & ditto*
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 Att. Gen. v. Mathie, *exons. & do.*
 Jones v. Jones, *fur. dirs. & costs*
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 Tritchley v. Williamson, *ditto*
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- Luckes v. Frost, *fur. dirs. & costs*
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 Bartrum v. Bartrum
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 { Ward v. Swift, *do.*
 { Ditto v. Lucas, *do.*
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 { Ditto v. Palmer
 Hill v. Smith
 Jumpson v. Pitchers
 Fry v. Fry
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 Coppen v. Gray
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 Payne v. Bristol and Exeter Railway
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 Barrow v. Duke of Norfolk, *at defendant's req.*
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 Joy v. Birch
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 Jennens v. Jennens, *exceptions*
 Foley v. Hill, *exceptions*
 Earl of Falmouth v. Turner
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 Mighell v. Lashmar
 Hodgetts v. Lord
 Sowter v. Bowden
 Yemms v. Williams
 Hobson v. Page
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 Attorney General v. Mathie, *at request of defendant*
 Vist. Ashbrooke v. Brainbridge
 London and Birmingham Railway
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 Beresford v. Bp. of Armagh, *exons.*
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 Halliday v. Best, *further directions*
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 Richards v. Earl Macclesfield, *exceptions*
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 Knowlys v. Madocks
 Hartley v. Renolds
 Mackereth v. Dunn

Prentice v. Phillips
 Protheroe v. Protheroe
 Holland v. Gwynne
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 Ward v. Alsager
 Ward v. Ward
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 Morse v. Tucker
 Sandys v. Long, *at def't's request*
 Attorney General v. Salter's Co.
 Cropper v. Crosby
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 Browne v. Browne, *further directions and petition.*
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 Potts v. Pinzgar
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Trulock v. Robey
 { Jolliffe v. Hector, *exceptions*
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 Ditto, Ditto Ditto, *ditto*
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 Moore v. Moore, *ditto*
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 King v. Croome
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 Ley v. Ley, *ditto, exons. and petn.*
 Harris v. Lapworth, *further directions and costs*
 Saxby v. Saxby, *ditto*
 Knocker v. Bunbury, *ditto*
 Moses v. James
 Doo v. London and Croydon Railway Company
 Windsor v. Windsor, *further directions and costs*
 Witherden v. Witherden
 Godden v. Crowhurst
 Atkins v. Hatton, *fur. dirs. & cs.*
 Brydges v. Branfill
 Barlow v. Lord, *fur. dirs. & costs*
 Bryan v. Kinder
 Lee v. Jones, *fur. dirs. and costs*
 Evans v. Cockeram, *ditto*
 Barrodaile v. March
 Attorney General v. Phillimore
 29th May, Campbell v. Foster, *further directions and costs*
 Yate v. Ricardo
 L. C. Metford v. Peters, *further directions and costs*
 Carpenter v. Creaswell, *exceptions*
 Gething v. Vigurs
 Lyse v. Kingdon
 Abraham v. Holderness
 Heath v. Hodgkinson
 Sutton v. Philpot
 Jones v. Prothero
 Smith v. Stovin
 Matchitt v. Palmer
 Sutton v. Maw
 Mardell v. Rippin
 Nedby v. Nedby
 Lucas v. Alexander
 Milbank v. Stevens
 Neale v. Dell
 Griffiths v. Griffiths
 Smith v. Wilcoxon
 Ditto v. Thompson
 Walker v. Thomason
 Miller v. Gow
 Cort v. Winder
 Clark v. Wilmot
 Stubbs v. Lister
 Burridge v. Rowe
 Simon v. Topham

Davies v. Davies
 29th { Rogers v. Rogers, *further directions and costs*
 May { Rogers v. Oliver, *cause*
 Whibley v. Hebb
 Osborne v. Harvey
 Helsham v. Langley
 Lodge v. Nicholson
 Nash v. Elsley
 { Townshend v. Fielden
 Lloyd v. Ditto
 Nicklin v. Dunning
 Boulter v. Boulter
 Bastin v. Bastin
 Blundell v. Blundell
 Clayton v. Lord Nugent
 Ward v. Price
 Gordon v. Peirson
 Woolley v. Jackson
 Ryan v. Daniel
 Veitch v. Irving
 Taylor v. Clark
 Douglas v. Kierman
 Swindell v. Wright, *further directions and costs*
 Swindell v. Swindell, *ditto*
 Ralph v. Watson, *ditto and petn.*
 Duncombe v. Davies, *exceptions*
 Capper v. Terrington, *further directions and costs*
 Sawyer v. Birchmore, *further directions and costs*
 Stone v. Matthews, *exons. & ditto*
 Bruges v. Hitchcock, *further directions and costs*
 Rennell v. Rodd, *ditto*
 Tylee v. Stace, *exceptions*
 Duncombe v. Davis, *ditto*
 Penfold v. Giles, *ditto*
 Duncan v. Chamberlain, *further directions and costs*
 Ewing v. Trecothick, *exceptions*
 L. C. 29th May, Gage v. Watmough, *fur. dirs. and costs.*
 Sharp v. Manson
 Taverner v. Day, *fur. dirs. & costs*
 De St. Cyr v. Commissioners of Bequests in Ireland
 Knapp v. Woodward, *further directions and costs*
 Bourne v. Buckton
 Grisbrook v. Stace
 Walker v. Jefferys
 Preston v. Kendall
 Yevily v. Parker, *fur. dirs. & cs.*
 Elliott v. Elliott, *ditto*
 Powell Calloway
 Jerdein v. Wilson, *fur. dirs. & cs.*
 L. C. 29th May, Isaac v. Gompertz, *ditto*
 Dent v. Dent, *rehearing*
 Hallam v. Fosbrooke
 29th May, Sadler v. Johnson, *further directions and costs*
 Bacon v. Taswell
 Moore v. Moore
 Micklem v. Richardson, *further directions and costs*

Ridgway v. Tarte
 Meux v. Bell, *fur. dirs. and costs*
 Senior v. Wilks, *fur. dirs. & costs*
 29th May, Danks v. Danks
 Tyrer v. Moor
 29th May, Corney v. Tribe
 Cocks v. Edwards
 Bourn v. Defaur
 29th May, Bennett v. Riale
 Ditto Curteis v. Eden
 Tudor v. Sneap
 Tunstall v. Brayfield, *further directions and costs*
 Mac Combie v. Cook, *ditto*
 Tudor v. Buchanan, *fur. dirs. & cs.*
 29th May, Bishop v. Sproule
 Jones v. Jones

New Causes.

Whittaker v. Wright
 Barton v. Curlewis
 East India Co. v. Coopers Co.
 Cruickshank v. Struth
 Elsam v. Hall
 Colston v. Colston
 Slagg v. Owen
 Fewster v. Turner
 Ross v. Ross
 Wallis v. Wallis
 Holt v. Horner
 Taylor v. Haygarth
 Hadfield v. Cullingworth
 Thomas v. May
 Blakesley v. Whieldon
 Hutton v. Hutton
 Taylor v. Davidson
 Harrison v. Child
 Marples v. Fletcher
 Browne v. Smith
 Cooper v. Fisher
 Martyn v. Tonge
 Saunders v. Goulty
 Hodges v. Daly
 Penney v. Todd
 Ledbetter v. Vickers
 St. John's College, Oxford v. Carter
 Leslie v. Rees
 Smith v. Curtis
 Howly v. Wenfield
 Playfair v. Birmingham and Bristol and Thames Junction Railway Company
 Chislett v. East
 Lyon v. Ord
 King v. Eming
 Gell v. Smith
 Midland Counties Railway Company v. Westcomb
 Lindsey v. Godmond
 Rock v. Silvester
 Thwaites v. Robinson
 Duncan v. Campbell
 Lovell v. Tones
 Welch v. Neale
 Coulsting v. Coulsting
 Curtis v. Mason

ATTORNEYS TO BE ADMITTED,

On the Last Day of Trinity Term, pursuant to Rules of Court.

Clerk's Name and Residence.

To whom articulated and assigned.

Dickinson, Daniel, 3, Cumberland Terrace ; and Ulverston.
 Robert Francis Yarker, Ulverston.
 Hodgson, John, 9, Prospect Terrace ; and
 Matthew Gaunt, Leeds ; assigned to T. L.
 chester. Marriott, Manchester.
 Rush, John Brook, Old Kent Road. John Roger Rush, Austin Friars.

SOLICITOR TO BE ADMITTED IN CHANCERY,

The Day after Trinity Term.

Cooper, Charles Henry, Cambridge. William Jeary Cannon, Cambridge.

APPLICATIONS FOR RE-ADMISSION, TRIN. T. 1840.

Benson, Alan, Papcastle, near Cockermouth.
 Burgess, John, 25, East Street ; Liverpool
 Street ; and Featherstone Buildings.
 Gray, William, Martha Street, Cambridge
 Heath.
 Hayward, John Raynes, Chapinanslade, near
 Frome.
 Judson, Charles Bower, Ware.
 Smith, Henry, Richmond ; and the Island of
 Jersey.
 Simson, Charles, 4, Bird's Buildings, Islington.
 Shutt, Joseph, Aldridge, near Walsall.
 Whitaker, John Frederick, Fyfield, Berks ; and
 Poole, Dorset.
 Welsh, John Hare, 2, Leather-sellers' Build-
 ings, London Wall ; and White Cross Street
 Prison.

Added pursuant to Judges' orders.

Bacon, William, 1, Heathcote Street ; and
 Drury Court.
 Elliott, James, 4, Oakley Square, Chelsea.
 Faithfull, William Dibsdales, Southampton.
 Hilton, William, the younger, Danbury,

NEW RULE OF THE EXCHEQUER OF PLEAS.

JUDGES' ORDERS.—COSTS.

It is resolved by the Judges, that when a Judge's order is made a rule of Court, it shall be a part of the rule of Court that the costs of making the order a rule of Court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party or his attorney, and discharged.

27 May, 1840.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assent.

4 June, 1840.

Tithes Commutation Amendment.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.
 [In Select Committee.]
 For facilitating the Administration of Justice.
 [In Select Committee.]

Lord Chancellor.

Indemnity to Clerks of Attorneys, &c.
 [For second reading.]

House of Commons.

To amend the Law of Copyright.
 [In Committee.] Mr. Serjt. Talfourd.
 To improve the High Court of Admiralty.
 [For third reading.]

Small Debt Courts for
 Aston, Marylebone,
 Liverpool, Wakefield Manor.
 Indemnity to Clerks of Attorneys, &c.

[Passed.]

Costs in Frivolous Suits.
 [For third reading.]
 Rated Inhabitants Evidence.
 [In Committee.]

Amendment of Inclosure Acts.

•• The other Bills remain as in our last List

REMOVAL OF COURTS OF LAW.

Petitions in favour have been presented
 from the attorneys in
 Somersetshire,
 Burton-on-Trent,
 Warrington.

THE EDITOR'S LETTER BOX.

The note for our Obituary shall be attended to.

We thank "Heliogabalus" for his caution, but believe we are in no danger.

The letters of "Adolescens," "Buzfuz," and "Scrutator," have been received.

The Legal Observer.

SATURDAY, JUNE 13, 1840.

—“Quod magis ad nos
Pertinet, et necesse malum est, agitamus.

HORAT.

THE LAW OF JOINT-STOCK COMPANIES.—No. III.

ON THE LIABILITY OF DIRECTORS AND SHARE- HOLDERS.

We shall now consider the liability of directors and shareholders of joint stock companies for the contracts and engagements of the companies. As between themselves this liability may be restricted in any way that the parties may agree upon, but unless there be an act of parliament, charter, or letters patent, it cannot be limited so far as other persons are concerned.

First, as to directors; and here a very little indeed is held to be sufficient to render a person liable.

If it can be shewn that a person has performed any act of management, he will be deemed an actual partner, and chargeable accordingly;^a and it will not be necessary to show that the individual sought to be charged actually signed any contract; it is sufficient if he consented to be a director, or belonged to the board of management, to make him responsible for the proceedings of the board.^b Nor is it necessary that he should sign the deed in order to render him responsible.^c

A person may be liable even without being a director. Where persons become directors in one of these proposed companies, they make themselves liable, and

other persons may do so if they interfere in the management, and hold themselves out as persons giving the order.^d

Next as to the liability of shareholders.—The rule laid down in *Ferring v. Hone*,^e was that if a person's name be entered in a book with those of several other subscribers, to a projected joint stock company, and he receives certain scrip receipts, he is liable as a partner in the concern, although he sells the scrip receipts before the deed for the formation of the company was executed, and he was not a party to that deed.

But the strict rule in this and other cases has been a good deal modified by later cases. Thus in *Fox v. Clifton*,^f where a prospectus was issued for a distillery company, with a capital of 600,000*l.*, and 12,000 shares, and to be conducted pursuant to the terms of a deed to be drawn up, all persons who did not execute the deed within thirty days after it was ready, were to forfeit all interest in the concern. No more than 7500 shares were ever allotted; only 2300 persons paid the first deposit; only 1106 the second; and only 65 signed the deed; and the directors, after the time for paying the second instalment had elapsed, advertised that persons who had omitted to pay had forfeited their interest in the concern; and it was held that an application for shares, and payment of the first deposit, did not constitute a partner one who had not otherwise interfered in the concern; and that the insertion of his name by the secretary of the company in a book containing a list of

^a *Doubleday v. Mushett*, 7 Bing. 118.

^b *Id.* Coll. on Partnership, 634. As to the liability of directors when an act of parliament has been obtained, see *Harrison v. Timmins*, 4 Mee. & W. 510; and 17 L. O. 466.

^c *Maudslay v. Le Blanc*, 2 C. & P. 401.

^d *Per* Ld. Denman, C. J., in *Bell v. Francis*, 9 C. & P. 67. As to the liability of members of clubs, see 13 L. O. 481.

^e 4 Bing. 28, stated more fully, *ante*, p. 2.

^f 6 Bing. 776; 9 Bing. 120.

subscribers, was not a holding out as a partner. In this case *Tisdal, C. J.*, went at great length into the question, and among other things he said, "We think the matter proceeded no further than that the defendants had offered to become partners in a projected concern, and that the concern proved abortive before the period at which the partnership was to commence; and therefore, with respect to the agency of the directors, which is the legal consequence of a partnership completely formed, we think the directors proceeded to act before they had authority from these defendants, for they began to act in the name of the whole before little more than half the capital was subscribed for, or half the shares were allotted. The persons, therefore, who contracted with the directors, must rest upon the security of the directors who made such contract, and of those subscribers who, by executing the deed have declared themselves partners, and of any who have by their subsequent conduct recognised and adopted the acts and contracts of the directors; but they have not the security of the present defendants, who are not proved by the evidence to stand in any one of such predicaments." And although *Perring v. Hone* was not expressly overruled, yet it was certainly discountenanced.

The rule laid down in *Fox v. Clifton* has been followed in subsequent cases. In *Vice v. Lady Anson*,^a where in an action for goods supplied for the purpose of working a mine, it appeared that the defendant had paid money for certain shares, and received a certificate that she was a proprietor of those shares, and that she had acknowledged that she was a shareholder, but no assignment of any interest in the mine had been made to her, it was held that the action could not be maintained. In *Browne v. Freeth*,^b it being in contemplation to form a company for distilling whiskey, a prospectus was issued as follows: "the conditions upon which this establishment is formed are, the concern will be divided into twenty shares of 100*l.* each, the concern to be under the management, &c." and it was held that this prospectus imported only that a company was to be formed, not that it was actually formed, and that a person who subscribed his name to this prospectus, and who was present at a meeting of subscribers, when

it was proposed to take certain premises for the purpose of carrying on the distillery, which were afterwards taken, and solicited others to become shareholders, but never paid his subscription, was not chargeable as a partner for goods supplied to the company.

This rule has also been followed in the still later case of *Pitckford v. Davis*,^b in which a project having been formed for the establishment of a company for the manufacturing sugar out of beet-root, a prospectus was issued stating that the proposed capital was to consist of 10,000 shares of 25*l.* each. The directors began their works, and entered into contracts respecting them, and manufactured and sold some sugar; but only a small proportion of the proposed capital was raised, and only 1400 shares out of the 10,000 were taken, and it was held that a subscriber who had taken shares and paid a deposit on them, was not liable on such contract of the directors, without proof that he knew and assented to their proceeding on the small capital, or expressly authorised the making of the contract.

The result of the cases would seem to be that if a shareholder does not sign the deed or in any way act in the management of the concern, he will not be liable for the engagements of the company, if the directors, without his consent or knowledge, depart from the proposals contained in the prospectus on the faith of which he became a shareholder.

It is to be observed, that a member of a joint-stock company, is not liable to be sued for the price of goods ordered by the company to be made for them, before he became a member, although such goods were delivered afterwards.^c

We have already considered how far a shareholder can divest himself of liability by parting with his share.^d

We feel we have by no means exhausted this branch of our subject, but we shall take occasion to advert to it on a subsequent occasion.

In our next article we shall collect the cases relating to actions and suits by and against joint stock companies.

^a *Vice v. Lady Anson*, 7 B. & C. 409.

^b 9 B. & C. 632; and see *Nockel v. Crosby*, 3 B. & C. 814; and *Dickinson v. Valpy*, 10 B. & C. 129.

^b 5 Mee. and W. 2; 19 L. O. 482.

^c *Whitehead v. Barron*, 2 Moo. & Rob. 248.

^d See *ante*, p. 1—3.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. II.

3 Vict. c. 15.

TITHES COMMUTATION AMENDMENT ACT.

An Act further to explain and amend the Acts for the Commutation of Tithes in England and Wales. [4th June, 1840.]

6 & 7 W. 4, c. 71, s. 67. 7 W. 4, & 1 Vict. c. 69, s. 11. 2 & 3 Vict. c. 62, s. 10. *Power to declare lands discharged from tithes in certain cases after confirmation of the award or agreement for gross rent-charge. As to the time of commencing such rent-charge. Intermediate payments, &c. to be deducted.*—

Whereas by an act passed in the seventh year of the reign of his late Majesty King William the fourth, intituled “An Act for the Commutation of Tithes in England and Wales,” it is enacted, that from the first day of January next following the confirmation of any apportionment in any parish under the said act the lands of such parish shall be absolutely discharged from tithes, except as in the said act is provided in certain cases, and instead thereof there shall be payable to the person entitled to such tithes, and in that behalf mentioned in the said apportionment, a sum of money in the nature of a rent charge issuing out of the lands charged therewith; and by an act passed in the first year of the reign of her present Majesty, intituled, “An Act to amend an Act for the Comutation of Tithes in England and Wales,” provision is made for the lands in a parish being discharged from tithes (except as in the said first-recited act is excepted) by agreement between the parties to any parochial agreement or supplemental agreement from certain days preceding or following the confirmation of the apportionment, instead of the said first day of January next following such confirmation, but so that the first payment of the rent-charge be made and recoverable at the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes; and by an act passed in the last session of parliament the commissioners appointed under the said first recited act are enabled by their award, and the land owners and tithe owners by supplemental agreement, in like manner to fix the period at which any rent-charge shall commence: and whereas, after an agreement for or award of rent-charge has been made and confirmed by the said commissioners, much delay is often occasioned in settling and adjusting the apportionment before the same can be confirmed by the commissioners; and to avoid the loss of the proportion of tithes or composition for the period intervening between the expiration of any former agreement or composition and the commencement of such rent charge the tithe owner is compelled to have recourse to taking tithes in kind, or to a suit in Equity; and in other cases, by reason of the lands so remaining subject to tithes, or composition for tithes, during such period, such tithes continue

to be taken in kind, or may be so taken on the determination of any composition existing at the date of such agreement or award, notwithstanding that the parties have agreed for, or the commissioners awarded, the sum which under the provisions of the said act ought to be taken as the permanent rent-charge payable instead of such tithes; and great hardship is thereby occasioned, contrary to the spirit and intent of the said acts: and whereas it is expedient to make provision for remedy thereof, and otherwise to explain and amend the said recited acts, in manner hereinafter mentioned; Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in the present parliament assembled, and by the authority of the same, that in every case where an annual sum by way of rent charge shall have been fixed in any parish, instead of the tithes of such parish, either by agreement or award, it shall be lawful for the said commissioners, by a declaration in writing under their hands and seal of office, or the hands of any two of them, at any period after the confirmation of any such agreement or award respectively, and before the confirmation of the apportionment to be made in respect of the rent-charge so fixed, upon the application in writing of any land owner or occupier, and upon such security being given to the said commissioners as they shall in their discretion think sufficient for the due payment to the parties entitled thereto of such rent-charge from the day to be fixed in such declaration, to declare that the lands in such parish shall be discharged from the liability to payment or render of tithes, or composition or rent in the nature thereof instead of tithes, and that instead thereof the annual payment or rent-charge so fixed by any such award or agreement respectively shall be paid to the person entitled to the same by half-yearly payments, commencing and calculating from such day of discharge named in such declaration as aforesaid: Provided always, that the day to be fixed in such declaration of the said commissioners as aforesaid shall, in every case in which any agreement for a composition or rent in the nature thereof instead of tithes shall be in force at the time of making such application to them as aforesaid, be the day on which such composition or rent shall determine, and in every other case shall be either the first day of January, the first day of April, the first day of July, or the first day of October, either before or after the day on which the agreement or award fixing the amount of such rent-charge shall bear date, as to the said commissioners shall appear most just and equitable: Provided also, that when such period of discharge shall have been fixed to take effect from any of such days preceding the date of such agreement or award, the said commissioners shall cause due inquiry to be made, and shall allow and deduct from the first payment to be made under such security the value of any tithes which shall have been rendered in kind, and the amount of any payment in respect of tithes, or composition or

rent as aforesaid, which shall have been made between such day and the date of such first payment of rent-charge.

2. *Leases of tithes granted before 25th March not to be affected by this act.*—Provided also, and he it enacted, that nothing in this act shall extend or be construed to extend to annul or make void any lease or leases of tithes granted before the twenty-fifth day of March, and which shall end or determine on or before the first day of January next; and that in any parish or place where such lease or leases shall have been granted as aforesaid, no tithe payer shall be at liberty to make the application hereby authorized to be made, until after the expiration of such lease or leases respectively, except in respect of lands the tithes whereof are not included in such lease.

3. *Notice of declaration to be published.*—And be it enacted, that the said commissioners shall, within ten days after the receipt of such application, cause notice thereof to be given to the tithe owner to whom such rent charge will be payable, and shall cause notice of such declaration to be twice published in some newspaper having circulation in the county where such parish is situated within twenty-one days from the date of such declaration, and from and after the expiration of such twenty-one days all the provisions of the said recited acts applicable to the rent-charge payable after the confirmation of the apportionment shall be applicable to the rent-charge payable by virtue of the provisions herein before contained from the period fixed by any such declaration.

4. *Provision for land owner paying estimated proportion of rent-charge in aid of security.*—And be it enacted, that if any owner of lands so discharged from liability shall be desirous of paying, in exoneration of such security, the proportion of rent-charge to which the whole of such lands, whether in his own occupation or in the occupation of any tenant, shall be liable, it shall be lawful for such owner to apply in writing to the valuer or valuers appointed to apportion such rent-charge, at any time after they shall have subscribed the declaration required in that behalf in the said first recited act, and before the confirmation of the apportionment, and to demand of such valuer or valuers a statement of the probable amount of such proportion, and such valuer or valuers shall and he or they is or are hereby required to furnish the same accordingly, and shall distinguish therein the probable amount to which the whole of the lands in the occupation of any tenant under such owner would be liable; and on receipt thereof such owner may cause a copy of such statement, or an extract of such parts thereof as shall relate to the lands in the occupation of any tenant, who, but for such declaration of discharge, would be liable to the render or payment of tithe in respect of such lands, to be served on such tenant by leaving the same at his usual place of abode, with an undertaking subscribed thereto by such owner to pay the amount set forth in such statement in aid or exonera-

tion of such security; and in every such case such tenant shall thenceforward be liable to pay to such owner by way of additional rent, such estimated proportion at the half-yearly days of payment fixed in the award or agreement for payment of rent-charge; and such owner shall be entitled to demand and recover the same as rent by all the usual remedies for recovery of rent in arrear, until the half-yearly payment falling due next after the confirmation of the apportionment: Provided always, that it shall be lawful for any such land owner or tenant, at any time within six months after the date of such confirmation, to apply to the said commissioners to take an account of the amount paid by any such tenant, and certify the amount of the difference, if any, between the amount so paid and the amount of rent-charge calculated as finally apportioned on such lands for the same period as such estimated amount has been paid, and if the rent-charge finally apportioned shall be greater than the amount so paid, it shall be lawful for such owner to demand and recover the difference accordingly; but if such tenant shall have paid more than the amount of such rent-charge, then it shall be lawful for such tenant, or (in case of his death) for his executors or administrators, to deduct the excess so verified as aforesaid from the next payment of rent accruing after the date of such certificate: Provided also, that in the event of the expiration or other sooner determination of the period of tenancy before the confirmation of the appointment such excess shall be deemed a debt due to the tenant, his executors or administrators, and shall be recoverable in an action of debt to be brought against such land owner as aforesaid, or his personal representatives.

[To be continued.]

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1840.

I. PRELIMINARY.

Where did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books you have read and studied.

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

State the names of the principal actions at law. What action must be brought for

—1. A libel? 2. A nuisance (as, carrying on an unwholesome trade?) 3. For seduction? 4. For non-payment of a bill or note? 5. To recover possession of a house? 6. To recover calls on shares?

For what injuries may a distress be levied, what may be distrained, and how are distresses to be disposed of?

If a party borrow money upon personal security, or for a temporary purpose where no mortgage is given, is there any security at common law which can be taken? Can a minor bring an action; and if so, how? Is there any and what limited period within which a debt is recoverable?

If a beneficed clergyman incur debts, is there any and what mode of obtaining payment out of the proceeds of his living? State the course of proceedings in an action of debt; and in how short a time can judgment be obtained where the proceedings are by default.

Can a person lawfully receive more than five per cent. interest; and if so, on what security?

Can a debtor be arrested on meane process; and if so, under what circumstances?

Has an attorney any lien upon a judgment; and if so, of what nature?

Is there any particular form required when a party executes a cognovit or a warrant of attorney?

Can a defendant change the venue; and if so, in what actions, and within what time?

After what period will a deed prove itself?

Within what period must application be made for a new trial?

What steps are required to be taken before an attorney can bring an action for his bill?

III. CONVEYANCING.

On the sale of a freehold estate, can the particular and conditions be varied by parol at the auction?

State the conditions, as regard title and conveyance, proper to be made at such sale.

Can a tenancy from year to year, created by parol, be surrendered by parol?

Is a mortgagor bound to give any and what notice to a second mortgagee of a prior mortgage; and will any and what consequences result from the omission?

If husband and wife mortgage the leasehold estate of the wife, to whom will the equity of redemption belong on the death of the wife?

What covenants are proper to be introduced in a mortgage of leasehold houses?

In what form should the mortgage be to protect the mortgagee from personal liability to the covenants of the original lease?

Is the title to dower, since the act relating to dower, enlarged, and in what instances?

And is it circumscribed in any and what instances?

Do estates held in joint-tenancy, tenancy in common, and in coparcenary, differ in any and what particulars?

How must freehold property be conveyed by a corporation?

What are choses in action; and are they assignable in law or equity?

Is it useful, and if so, in what respect, to take a bond from a mortgagor in addition to the mortgage and covenant for the payment of principal and interest?

If the purchaser of one lot of an estate give a deed of covenant for production of the title deeds to the purchaser of another lot, and afterwards sell and convey the property, will his personal liability under the deed of covenant be discharged, or how is it to be provided against, and the production of deeds secured to the covenantee?

A. having contracted for the purchase of an estate, devised it to B. but died before the conveyance. By whom must the purchase money, on completing the contract, be paid?

IV. EQUITY AND PRACTICE OF THE COURTS.

If a bill be filed for a specific performance of an agreement, and the only question in dispute relate to the title, is it necessary to set down the cause to be heard, or can any and what shorter course be adopted?

When a claim is made by two or more persons, and the debtor or party in possession of the property is uncertain to which of them it belongs, what course should be taken by him for his own protection?

In what cases is it advisable to file a bill to perpetuate testimony?

In the case of a sale under a decree of the Court, within what period can the biddings be opened, and what will be required before the Court will allow a party to do so?

What is the meaning of an answer being impertinent; and when considered to be so by the plaintiff, what course should he adopt?

If a person appoint a creditor his executor, who proves the will, will such executor stand in any and what better circumstances than other creditors?

What is the course to be pursued by a legatee, to compel payment of his legacy?

When the defence to an action at law arises from facts within the knowledge of the plaintiffs in law, how can the defendant at law elicit such facts from the plaintiffs at law?

What course does the Court usually take to protect property pending a litigation,

- either in the case of rents, or in the case of money in the defendant's hands?
- Is a pecuniary legatee entitled to interest; and if so, from what time, and at what rate of interest, where no time or rate of interest is mentioned in the will?
- Is an executor chargeable with profits made by him from the employment of his testator's estate in trade, or is he chargeable with interest only?
- Where the personal estate of the testator has been exhausted in paying mortgages and specialty debts, have the simple contract creditors any claim against the real estate?
- Is a devisee of a mortgaged estate entitled to have the mortgage paid off out of the personal estate, or is he to take it subject to the mortgage?
- Where there are specialty, simple contract, and judgment creditors, are any of them, in the event of a deficiency, entitled to a priority of payment; and if so, state the priorities?
- What constitutes an equitable mortgage, and what steps are necessary to be taken to make available such security?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

- What are the principal acts of bankruptcy, in respect of which a fiat may be obtained?
- Are clergymen prohibited from trading; and is the legality of the trading in this and other cases material, as an exemption from the Bankruptcy Laws; and why?
- Are peers and members of the House of Commons liable to be made bankrupts; and if so, under what circumstances?
- What are the necessary facts to be ascertained, and steps to be taken, previous to striking a docket?
- Can the assignee of a bond be a petitioning creditor? State the general rule applicable to this question.
- Is there any and what difference between official and creditors' assignees in respect of their appointment, power, and duties?
- Is the separate property of each partner liable to the partnership creditors under a joint fiat; and under what circumstances?
- What is the nature and the effect of the bankrupt's certificate?
- By what means and under what circumstances are fiats annulled?
- By what circumstances is the legal right of the landlord to distrain for rent superseded, after the bankruptcy of his tenant?
- What steps are necessary with regard to the proceedings under a bankruptcy, to render them admissible as evidence?
- Can an act of bankruptcy be committed by a party after he has left off trading? and if so, is the period at which the petitioning creditor's debt accrued in any and what respect material?
- Are the assignees entitled to property which accrues to the bankrupt after the fiat; and if so, is there any and what exceptions?
- Can the separate creditor of one partner in a firm sue out a joint fiat? State the reason for the answer.
- Does personal property held by the bankrupt in trust pass to his assignees with any and what exception?

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

- Will a defendant be allowed to plead *in forma pauperis* to an indictment in the Queen's Bench, on making oath, as in a civil case, that he is not worth 5*l*.
- A statute created a misdemeanor, and the accused attempted to commit the offence, would the attempt be in itself a misdemeanor?
- If a statute enact that the erection of any building within certain limits shall be deemed "a common nuisance," and also give a summary remedy before magistrates, must the offender be proceeded against summarily, or would he be subject to an indictment for the nuisance?
- On an indictment for a nuisance, can the prosecutor be compelled, and by what means, to deliver to the defendant a particular of the acts of nuisance intended to be relied on?
- Can a parish be compelled to repair a road dedicated to and used by the public, although neither such dedication, nor user, have been adopted or acquiesced in by the parish?
- If a person pick up a thing, when he knows he can immediately find the owner, and instead of returning it to the owner, convert it to his own use, would he be guilty of larceny, or merely subject to a civil action?
- If a letter addressed to *J. Wilson*, London, containing a bill of exchange made specially payable to *J. Wilson*, should by mistake be delivered to a person of the same name, would the indorsement of the bill by that person, knowing that it was not intended for him, amount to forgery?
- Would the driver of a coach hired for the day be considered the servant of the party hiring it, so as to bring him within the statute relating to larceny by servants?
- If *A.* and *B.* be riding fast along a highway.

and *A.* ride by without doing any mischief, but *B.* ride against the horse of *C.*, whereby *C.* is thrown and killed, would this be manslaughter in *A.*?

Would raising a window, which is shut down close but not fastened, though it has a hasp which might have been fastened, be deemed a breaking of the dwelling house?

Would an entry through a hole in the roof of a house, left for the purpose of light, constitute housebreaking?

In an indictment for receiving stolen goods, knowing them to have been stolen by a person named in the indictment, can the receiver be convicted without proof of the stealing by the person named?

Is it competent to a jury to act upon the evidence of an accomplice, without confirmation of his statement?

Would the intoxication of a person charged with murder be a proper circumstance to be taken into consideration, in order to shew whether the act was premeditated, or done with sudden heat or impulse?

It is usual in an indictment for murder, where the death is alleged to be caused by a wound, to describe the length, breadth, and depth of the wound. Is such particularity necessary?

THE LORD CHANCELLOR'S BILL FOR APPOINTING TWO NEW EQUITY JUDGES, AND ABOLISHING THE EXCHEQUER EQUITY JURISDICTION.

We last week urged upon the profession, and especially country solicitors, the necessity of expressing their sense of the measure for the above objects, now before the House of Lords, by petitions, and the country towns have answered well to the call. In the short time that has intervened, petitions from some of the principal towns have been received, and no doubt each day will bring more. The numerous signatures to the petitions, and the information which they display on the subject, shew that the opinions of the country solicitors on these subjects are deserving of equal consideration with those of their London brethren.

We have heard of no petitions against the measure except one from Norwich, which advocates the preserving the Exchequer Equity Court, but with no stronger reason than that there are heavy arrears in Chancery, which cause delay, whilst there are no arrears in the Exchequer. Among the petitions mentioned below is a petition from other solicitors in Norwich, expressing their opinion in favour of the Lord Chancellor's measure.

With two of the petitions which have been received we have been so much struck that we shall give them to our readers at full. One of them is from Liverpool, and the other from

Bristol. The point in the petitions as to the interference of Equity business with the Common Law business of the Exchequer, is new and important.

We regret that our space will not allow us to give more of them at length, for there are many which well deserve a careful perusal.

The others are from Solicitors and Law Associations in the following towns, and they represent in various terms, the evils resulting to the suitors of the court and to the solicitors from the present state of business in the court and offices; point out the uselessness of making the attempt to continue the Exchequer Equity Court distinct from Chancery; and urge forcibly the duty of the legislature to pass the bill now before parliament, and to follow it up with measures for strengthening and improving the Chancery offices, especially the Masters' office.

The Petitions received are from the following places:—

From the Attorneys and Solicitors of Alnwick.

From the President, Vice President, Secretary, and other Members of the Committee of the Birmingham Law Society.

From the Solicitors of Bristol (unanimously agreed to at a General Meeting).

From all the Solicitors of Banbury.

From the Law Association of Cambridge.

From the Solicitors of Cockermouth.

From the Solicitors of Chester.

From the Solicitors of Colchester.

From the Solicitors of Coventry.

From the Solicitors of Hull.

From the Solicitors of Glamford Briggs, Lincolnshire.

From the Solicitors of Huddersfield.

From the Solicitors of Hereford.

From the Solicitors of Kidderminster.

From the Solicitors of Leicester.

From the Solicitors of Liverpool.

From all the Solicitors of Lynn.

From the Solicitors of Louth.

From the Members of the Manchester Law Association.

From the Solicitors of Melton Mowbray.

From the Solicitors in Monmouthshire.

From the Solicitors in Norwich.

From the Solicitors of Oxford.

From the Solicitors of Settle.

From the Solicitors of Shrewsbury.

From the Solicitors of Sidmouth and Sallerton.

From the Solicitors in Thorne and Hatfield.

From the Solicitors of Woodbridge.

From the Solicitors of Wakefield.

From the Solicitors of Warrington.

From the Solicitors of the Division of Wington near Bristol.

From the Solicitors of Wigan.

From Solicitors assembled under a commission to examine witnesses at Weston Lubedge, Gloucester.

The petitions from Liverpool and Bristol are as follows:—

The humble Petition of the undersigned Attorneys at Law and Solicitors practising in Liverpool,

Sheweth,

That your petitioners have observed with much satisfaction the introduction of a bill into your Right Honourable House, having for its object the increase of the efficiency of the High Court of Chancery, by appointing additional Judges of that

Court, a measure which, if accompanied with other reforms, must be attended with great benefit to the suitors of the Court, and to the country at large.

That your petitioners fully concur in the proposal set forth in this bill for transferring the Equity Jurisdiction of the Court of Exchequer to the Court of Chancery, as the existence of two Courts of Equity with different rules of practice is a positive evil, and instead of continuing both Courts and assimilating their practice, it would be more convenient and more economical to suitors to resort to one Court for all the objects of relief in Equity.

That your petitioners beg to call the attention of your Right Honourable House to the important fact that a great measure of reform was introduced into the Court of Exchequer as a Common Law Court about ten years ago, when that Court was thrown open to the attorneys of the other Courts of Common Law, on which account and in consequence of the great arrears of business in the Court of King's Bench, and the continued influx into it of business peculiar to that Court, the Court of Exchequer has now become the Court of resort by all the principal practitioners of the law. And your petitioners can state with confidence that the most important causes at Common Law relating to the commerce of this kingdom are now brought under the consideration of the Judges of the Court of Exchequer; and your petitioners therefore, submit that the object of the Legislature in endeavouring to convert the Court of Exchequer into an efficient Common Law Court having been accomplished, the Common Law suitors of the Court who have been thus encouraged to resort there, are entitled to have the undivided attention to their cases of the Lord Chief Baron and the other learned Barons of that Court, and that on this ground alone it is highly expedient that the Equity business of the Court of Exchequer should be transferred to the Court of Chancery.

That your petitioners can attest that the mode in which business is now transacted in the offices of the Masters in Chancery, is productive of great delay and expence to the suitors of the Court, and it is most desirable that the state of business and the mode of practice in all the Chancery Offices, and particularly those of the Masters in Chancery and the Six Clerks, should undergo the most rigid examination, and that the fullest powers should be given to the Judges of the Court of Chancery to remodel the existing offices, and to regulate the pleading and practice of the Court, so as to increase its efficiency and dispatch.

That whilst your petitioners cordially approve of the proposed addition to the judicial strength of the Court of Chancery, they are most desirous of recording the views they entertain that increased dispatch of business by the Judges of the Courts would be rather prejudicial than advantageous to the general suitors, by still further crowding and embarrassing the Masters' Offices, unless a corresponding acceleration of business in the Masters' Offices can be at the same time effected.

Your petitioners therefore, humbly pray your Right Honourable House, that the bill for the better administration of justice now brought into Parliament, may be passed by your Right Honourable House, and that such other measures may be adopted for relieving the suitors in Chancery from the present defects of that Court, as in the wisdom of your Right Honourable House may seem meet.

And your petitioners will ever pray, &c.

The humble Petition of the undersigned Attorneys at Law and Solicitors in Chancery, practising in the city and county of Bristol, agreed to at a Meeting held at the Law Library there, for the purpose of considering the Provisions of the Bill hereafter referred to, on the 8th of June, 1840 :

Sheweth,

That your Petitioners have seen with the greatest satisfaction that the attention of your Right Honourable House has been drawn to the accumulation of business pressing upon the Courts of Equity in this country, and to the inadequacy of the present strength of these Courts to meet the growing demands upon them, without reference to the enormous mass of arrears already existing, and that a Bill for remedying these evils and for removing the Equity Jurisdiction of the Court of Exchequer into the Court of Chancery has been brought into your Right Honourable House.

Your Petitioners, with the deepest submission to the wisdom of your Right Honourable House, cannot abstain from the expression of their opinion that the abolition of any difference in the manner of administering the Equitable Jurisdiction of England, and the appointment of two additional Judges *wholly unconnected with any of the Courts of Law*, are measures well calculated to produce the desired effect.

And your Petitioners are also most anxious to express their conviction that it will be necessary that the proposed addition to the Judicial strength of the Court of Chancery should be followed up by further measures for expediting and improving the administration of the business of the Court in its various departments, before the Masters and in the Public Offices; and that, with this view, ample powers should be given to the Judges of the Court to regulate the practice of those Offices, so that the improvements and proceedings in them may keep pace with the increased dispatch in the hearing of causes, which it is the chief object of the pending Bill to provide.

Your Petitioners, therefore, humbly pray your Right Honourable House to give its sanction to the principle of the Bill now before your Lordships, with such additions thereto as may provide an efficient machinery for carrying its objects into full effect.

And your Petitioners shall ever pray, &c.

ANOTHER WORD AS TO OURSELVES.

THE injunction obtained against this work, for an alleged piracy of some cases which appeared in another publication, has been continued by the Vice Chancellor, for want of an affidavit which we could not procure, from persons who assisted our reporters. As any report of our own might be considered a partial one, we prefer taking that of the *Times* :—

"Vice Chancellor's Court.

Monday, June 8th.

SWEET V. MAUGHAM.

Mr. Wigram, with Mr. J. Russell, moved to dissolve an *ex parte* injunction obtained on the

36th May last, by which the defendants, who were the proprietors and publishers of the *Legal Observer*, were restrained from printing and publishing any copies of their periodical work containing reports of cases which had been copied from the reports published by the plaintiff in the *Jurist*. The motion to dissolve was supported by the affidavits of the editor and printer of the *Legal Observer*, which stated that engagements were entered into in 1833 with three barristers, to supply the publication with reports of cases decided in the various courts of law and equity, and from that time to the present, the reports contained in the *Legal Observer* had been regularly supplied by them in manuscript to the printer, and that no case published in the *Legal Observer* had ever been copied from the *Jurist*. The barristers themselves had each also made an affidavit, in which they stated that the reports severally supplied by them to the *Legal Observer* were either prepared from notes taken by them in Court or furnished to them by other barristers, or by legal friends, but that they had in no instance ever copied any report from the *Jurist*. The learned counsel submitted it was impossible to meet the general and undefined allegations of piracy in the affidavits with reference to cases which ran through a period of nearly two years, in any other way than by a general denial that any case had ever been taken from the *Jurist*, and contended that the similarity in the reports was not sufficient to sustain the charge of piracy, inasmuch as the same resemblance was to be found in a vast number of cases (many of which the learned counsel brought under the notice of the Court) which were first published in the *Legal Observer*, and which on the argument of the *Jurist*, must have been pirated by them from the defendants.

Mr. K. Bruce, Mr. Jacob, and Mr. Sharpe were not called on to address the Court in support of the injunction.

His Honor said he did not find, in what had been stated to him, any answer to the proposition that the reports published in the *Legal Observer*, which were mentioned in the schedule, had been taken from corresponding cases in the *Jurist*. The affidavits of the gentlemen who had taken notes of cases for the defendant's publication, which stated that the reports were either prepared from their own notes or from notes which were furnished to them by other barristers or legal friends, were not at all inconsistent with the fact that what was supplied to them by other legal friends might have been copied from the *Jurist*. If the matter rested on the present affidavits, he should continue the injunction, and direct the plaintiffs to bring such action as they should be advised against the defendants forthwith."

The fact of the matter is this, in which we are confident we shall be borne out by all persons acquainted with the subject. It is the habit of the gentlemen who report cases in the Superior Courts to assist each other. They

sit near each other, they communicate freely their several versions of what passes, and thus a similarity in the several reports frequently arises. They also frequently interchange notes, and the identical expressions may occur in each report. But each reporter has a note of his own.

Now our contemporary has availed himself of this practice, and by making the first attack has got a seeming advantage over us; but we shall see whether in the long-run he will either injure our work or benefit his own. Our tale is soon told. It is impossible that we can give all the cases we receive in every number. Some cases must appear therefore first in other works; but we do claim a general priority of publication in the principal courts. We say, and we can prove if necessary, that in the Lord Chancellor's Court and in the Queen's Bench (before the Four Judges) we have maintained a general priority of reports, and this has frequently extended to the other Courts. We also say, that especially in the Lord Chancellor's Court, this similarity, often amounting to identity of expression, prevails, and that we can thus turn the tables on our contemporary.

Our readers, as professional men, will not expect that we should state the precise course intended to be pursued by the proprietors of this work. We shall adopt speedy measures to enable our publisher to resume the sale of those few numbers out of our nineteen volumes, which seem to be included in the injunction."

The old saying is perhaps verified in our case, that "the cobbler's wife is worst shod." In hurrying on to dissolve the injunction, the first object of the proprietors (as members of the profession) was to remove all possible imputation on their conduct and character. This they have effectually done by their own affidavits, and by those of their editor, reporters, publisher and printer. For the rest, we shall take our time to adopt the course which appears right and proper, and which will at least satisfy our friends, if not our opponents.

* The affidavit of the shopman of the plaintiffs (who are booksellers) states the purchase of several Numbers of the *Legal Observer*, which, we suppose, contain the cases in question.

*Michaelmas Term.**[Continued from p. 70, ante.]*

<i>Clerk's Name and Residence.</i>	<i>To whom articulated and assigned.</i>
Dymock, Robert Myddleton, 7, Thanet Place, Temple Bar; and Ellesmere.	George Harper, Whitchurch.
Davie, Richard Henry, Wellington.	John Symes, Wellington.
Dakins, Frederick Octavius, 2, Church Row, Stepney.	John Church, Colchester; assigned to James Wright, Nags Head Court.
Dudley, Edwin, Frederick's Place, Old Jury; and Stourbridge.	William Morgan Crompton, Stourbridge.
Day, Samuel, 6, Ely Place; and St. Neots.	William Day, St. Neots.
Drew, Henry Richard, March.	Richard Mathews, March.
Dolman, Frederick William, 57, Clarendon Street; and 25, Lincoln's Inn Fields.	Robert Cruikshank, Gosport; assigned to Antonine Dufaur, Lincoln's Inn Fields.
Davies, Edward Martin, 8, Euston Grove; and Swansea.	Thomas Thomas, Swansea.
Darwell, Thomas, the younger, 9, Derby St.; Great Coram Street; Manchester.	Henry Bever, Salford; and James Frederick Beever, Salford.
Etches, James Goulborn, 6, Thanet Place; and Whitchurch.	George Harpur, Whitchurch.
Essell, George Ketchley, 120, Fore Street; and Rochester.	George Essell, Rochester.
Edwards, William, 6, Chesterfield Street; St. Thomas's Street; and Argyle Street.	William Hazard, Redenhall-with Harleston.
English, Vincent John, Bath.	John English, Bath.
Fallowdown, Charles Selby, 42, Claremont Square.	Peter Wright, Inner Temple.
Fisher, Charles, 65, Charing Cross; 49, Southampton Row; Barnstaple; and Edgeware Road.	Joseph Fisher, Bury Street, St. James's; assigned to Thomas Hooper Law, Barnstaple; assigned to Samuel Fisher, Bucklersbury.
Fenton, Thomas, Newcastle-under-Lyme.	Robert Fenton, Newcastle-under-Lyme.
Ford, John Kermack, 27, Francis Street; and Southsea.	George Augustus Callaway, Portsmouth.
Fulford, Robert, 9, Chadwell Street; Bideford; and 15, Jewin Crescent.	Harry Arthur Harvie, Bideford.
Forder, Augustus Turk, Leamington Priors.	William Ewington, late of Leamington Priors; assigned to G. Allenby Rushworth, Staple Inn; assigned to James Raper Highmore, Leamington Priors.
Futvoye, Edward, 25, Myddleton Square.	James Fairbank, Staple Inn; assigned to Henry Coode, Guildford Street.
Fussell, James Flower, Bristol.	John Bush, Bristol; and Edward Clark, Bristol.
Fell, Robert, 3, Raymond Buildings; and Chester-le-Street.	John Burrell, Durham.
Fox, William Leedes, Stowmarket.	James Gudgeon, Stowmarket.
Gwillim, James Sheward, 16, Southampton Street, Bloomsbury.	James Wallace Richard Hall, Ross; assigned to William Wyke Smith, Southampton St.
Gunner, Charles James, 17, Great Russell Street; and Bishop's Waltham.	William Gunner, Bishop's Waltham.
Gray, Owen, West Ham Lane.	James Templer, 23, Great Tower Street.
Gregory, Thomas, 5, Upper Montague Street.	Jonas Gregory, Clement's Inn.
Griffiths, Thomas, Bishop's Castle.	John Griffiths, Bishop's Castle.
Garbett, Edmund, Wellington.	John Tanner, Wellington.
Gell, Alfred, 45, Penton Place; New Ormond Street; and Lewes.	Francis Harding Gell, Lewes.
Gates, Henry Pearson, 12, Ampton Street, Gray's Inn Road; 13, Featherstone Buildings; Wotton.	Thomas Holt, Gloucester.
Gall, James Charles, 5, Great Chart Street; Gray Terrace; Buttisland Street; and Singleton Street.	William Brook, Kenninghall; assigned to William Ranson, Stowmarket; assigned to Daniel Calver, Kenninghall.
Harrison, John Pryce, 27, Henrietta Street; and Welshpool.	Francis Allen, Welshpool.
Hall, Charles, Clitheroe.	Henry Hall, Clitheroe.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—NEW GENERAL ORDERS.

No order of any branch of the Court is to be treated as a nullity, how irregular soever it may be, but it must be discharged before a contrary order can be properly made.

Where a decree was made in a cause at the Rolls, directing certain inquiries, after the 20th of May 1837, when the general orders of the 5th of May came into operation, and the report subsequently made being incomplete was referred back by the Vice Chancellor to be reviewed, that act of the latter Court had not the effect of taking the cause from the Rolls.

This was an appeal motion from an order of the *Vice Chancellor*. It appeared that the original bill was filed in 1797. There was a decree of reference to the master in 1803, and in 1810 the master made his report. Upon that report and for further directions the cause came on to be heard at the Rolls in 1834, when a further reference to the master was ordered. To the report made in pursuance of that order, exceptions were taken by the defendants, who set them down for hearing before the *Vice Chancellor*, the plaintiffs having at the same time set the cause down for hearing at the Rolls. The exceptions were heard by the *Vice Chancellor*, Feb. 1837, when his Honour finding the report not to embrace all the necessary enquiries, by an order of the 3rd of March referred it back to the Master to be reviewed, reserving the consideration of costs. Master Martin, who made the original report, being absent from illness, the matter was transferred to Master Wingfield, who in pursuance of the last mentioned order, made his report the 30th of May 1839. To that report the plaintiffs took exceptions, and on the 10th of June they obtained an order to set the exceptions down for hearing at the Rolls, together with the cause on further directions, and on the 14th of June they served the defendants with that order, while on the 25th of the same month the defendant served the plaintiffs with an order, obtained by them on the 19th of June, to confirm the report before the *Vice Chancellor*. His Honor afterwards made two orders, an order *nisi* on the 6th of July, and an order *absolute* on the 15th of July, for confirming the report. In the beginning of the present year the plaintiffs moved his Honor to discharge both these orders as being irregular, which application his Honor refused by an order dated the 23d of April last. The present motion was for discharging this last order and also the orders of the 6th and 13th July last; and also in case the *Lord Chancellor* should be of opinion that the exceptions to the last report ought to be heard before the *Vice Chancellor*, then the motion had further for its object to discharge the plaintiffs order of June last, for setting the exceptions down at the Rolls, and in such case that they might be set down

before his Lordship with the cause upon further directions.

Mr. *Wigram* and Mr. *Mylne* for the plaintiffs, in support of the motion, submitted, in the first place, that their clients were quite regular in setting the exceptions down at the Rolls with the cause. The original decree in 1834, was made at the Rolls, and by the 3d and 4th rules of the 10th of the new general orders, dated the 5th of May 1837, for better regulating the hearing of causes and other matters in Chancery, the cause properly belonged to the Rolls, and all subsequent hearings of the cause on exceptions and further directions should be at the Rolls. The setting down of the exceptions before the *Vice Chancellor* in 1837, and the order then made to refer back the report, did not take the cause from the Rolls. The reservation of costs in that order had not that effect, *Senior v. Wilks*.^a The second and principal ground for the present motion was, that the orders of the 6th and 13th of July were unquestionably irregular, in this, that the defendants did not first set aside the order of the 10th of June for setting the last exceptions down at the Rolls. That order could not be treated as a nullity, *Body v. Kent*.^b His Lordship had, over and over, within the last three years, declared in this court, that no order, however irregular, could be treated as a nullity. Such an order should be first discharged, before any other order could be made in the cause.

Mr. *Stuart* and Mr. *Bethell* insisted that the orders of the 6th and 15th of July were quite regular. The defendants had properly set down the cause for confirming the report and for further directions in the *Vice Chancellor's Court*. The cause had properly belonged to that court from the date of the order made on the defendant's exceptions, referring the report back to be reviewed. The report then made bore upon the face of it, to be a report in pursuance of that order of the *Vice Chancellor*. Was not that therefore the proper court for obtaining the orders for confirming the report which was made to that Court in pursuance of its order?

The Lord Chancellor.—This is a question of great importance, being in fact whether parties can treat an order of this Court as a nullity. There was an order obtained at the Rolls to set down the exceptions, with the cause upon further directions. The defendants, with full knowledge of that order, obtain an order *nisi*, and another order for confirming the report in the *Vice Chancellor's Court*, and for setting down the cause for further directions in that court. The report was, as it purported to be, in pursuance of the order of the *Vice Chancellor* of the 3d of March, 1837. But the irregularity was in treating the order of the Judge at the Rolls as a nullity. If the registrar had been informed that there was an order for setting down the exceptions at the Rolls, he would not have drawn up the order for proceeding before the *Vice Chancellor*. This Court will

^a 2 Keen 210.^b 1 Merival, 361.

not permit the previous order to be treated as a nullity, and while that order stands, no proceeding inconsistent with it can be taken in the cause. Exceptions cannot be set down in one branch of the Court, and a report set down to be confirmed in another. It was extraordinary that the defendants should thus proceed after notice of the order of the Rolls; these orders, the order *nisi* and the other of the 13th of July, must be discharged with costs. It is not necessary for me to give my opinion as to the general orders of May 1837, as my judgment is founded on the irregularity of treating the order of the Rolls as a nullity; but, if I were called on to give an opinion, I should say that the Rolls is properly the Court before which this cause should proceed. The order of the Vice Chancellor of March 1837, was the order that gave the Master authority to review the report, but the matter to be enquired of was part of what was previously referred by the decree at the Rolls, and the Master to whom that reference was made being too ill to make the effectual enquiry, the matter was transferred to another Master by the Vice Chancellor's order. That Master reported on the matter previously referred by the decree. I have no doubt, if it were necessary for me to decide on the new orders, that the Rolls is the branch of the Court which ought to have cognizance of the cause, and there also it is more likely that it will be sooner disposed of. In discharging the Vice Chancellor's orders, which I do with costs, the exceptions will remain to be heard at the Rolls; some stop must be put to this contest about the two branches of the Court.^c

Wilkins v. Stevens.—At Westminster, May 8th, 1840.

Queen's Bench.

[Before the Four Judges.]

LAW RELATING TO HORSES.

A gentleman going to buy a horse, and getting permission to try it, may not only ride it, but may bonâ fide put a groom on it to try it, and assist him in forming an opinion of its value.

Case for an injury done to a mare. The declaration alleged that the plaintiff was possessed of a mare of great value, and that the defendant at his request had the care and custody of the said mare of the said plaintiff, for the purpose of trying it, whereby it became his duty to take proper care of the same. The declaration then went on to allege that the defendant did not take proper care of the mare, that she received a severe injury, and died from the effects of it. A count in trover was added. The defendant pleaded not guilty. The cause was tried before Mr. Justice Coleridge, when it appeared that the mare in question was sent to Shackell's livery stables for sale; that the defendant saw the mare and expressed a wish

to try it. He received permission to do so, and rode it a short distance to a friend's house, where he stopped, and after having some conversation with his friend, put his friend's groom on the mare, which shortly afterwards ran away with the groom, threw him off, and then running against some palings in the park, spiked itself and was killed. Under these circumstances the learned judge was of opinion that the defendant had done nothing which he was not entitled to do, and therefore directed a nonsuit.

Mr. Kelly now moved to set aside this nonsuit. The defendant had obtained permission to try this mare, and he had no right to put another person on its back. [Lord Denman, C. J.—There might not be a fair trial without putting another man on the mare's back.] That is taking another man's opinion and not forming his own: In *Bringle v. Morrice*,^a this very question arose, and it was held there that a man borrowing a horse may not put his servant on it; but that a man hiring a horse for a time may. This case, however, is still stronger. It is clear that the defendant had no right to put the mare out of his own controul without receiving a licence for that purpose. Here the servant was not the defendant's servant, nor did the defendant accompany him in his ride. In every respect, therefore, the horse was out of the defendant's controul. The permitting the groom to ride it was therefore a conversion. Suppose the groom had been dishonest, and had carried off the horse, no action for its value could have been maintained against the defendant, for the groom would not have been his agent for the purpose of the larceny. That shews that the giving up the mare to the groom was parting with the possession of it to a stranger. That was an unlawful conversion. [Mr. Justice Littledale. Does it amount to that? or is it more than that he put the mare into the hands of the groom to have his own opinion confirmed by that of a man of skill.] He had no right to do that without a specific permission.—[Lord Denman, C. J., can it be said that he had no right to do this? He had a right to try the mare. Was not this, if done *bonâ fide*, a mode of trial.] To hold it to be so, will be to open a door to a very unlimited mode of treating the property of other people.

Lord Denman, C. J.—According to this argument, if a man went to buy a horse with a view that his groom should ride it, he must not, without asking specific permission to do so, tell his groom to get on it and try it. There is nothing to support the special count.

Mr. Justice Littledale.—If you borrow an horse for one purpose, and use it for a different purpose, that is a conversion. Such does not appear to be the fact on the circumstances of this case.

Mr. Justice Patteson, and Mr. Justice Williams concurred.

Rule refused.—*Lord Camoys v. Scurr*, clerk, T. T. 1840. Q. B. F. J.

^c On the last preceding day of his Lordship's sitting, there was a long argument, whether a motion in a cause marked for the Rolls, was to be made there or before the Vice Chancellor.

Queen's Bench Practice Court.

ATTORNEY.—ANSWERING MATTERS IN AFFIDAVITS.

The Court will grant a rule nisi requiring an attorney to answer the matters in the affidavit, in respect of certain misconduct of the attorney in appropriating money to his own use for the recovery of which a bill has been filed in equity.

Cole moved for a rule to shew cause why an attorney whose name was not mentioned, should not answer the matters in the affidavit, and why he should not be struck off the roll. The substance of the affidavit was that certain sums of trust money had come into the hands of the attorney in a particular manner, for the purpose of laying them out in certain securities. The mode suggested was by means of fraudulent and false representations. The monies so obtained were applied by the attorney to his own purposes. When these malversations were discovered, a bill in equity was filed against the attorney. Since the bill had been filed, the attorney absconded. The object of the present application was, that in respect of the misconduct of the attorney in the course of the transactions he might be compelled to answer the matters in the affidavit, and be struck off the roll.

Coleridge, J.—The difficulty I feel is, that I am called on to act summarily with respect to this attorney, while in fact the matter in which the supposed impropriety took place, is in a course of inquiry before a competent tribunal.

Cur. adv. vult.

Coleridge, J.—I think a rule may be granted. Rule granted, *Ex parte*.—T. T. 1840. Q. B. P. C.

EXAMINATION OF ARTICLED CLERK.—ENROLMENT OF ASSIGNMENT.—INDEMNITY ACT.

Where an enrolment of an assignment has not taken place within six months after execution, the Court will, under special circumstances, allow the clerk to be examined de bene esse

This was an application by an articulated clerk for leave to be examined under these circumstances: the clerk had been articulated on 3d March. The master dying, he was assigned in November 1838; this assignment was not enrolled within six months after its execution. The time of service, therefore, would only count from the date of the enrolment, and not from the date of the assignment. The consequence was, therefore, that a certain portion of his service would not be regular. The object of the present application was to permit the applicant to be examined *de bene esse* in the present term, to be admitted this term in case the Annual Indemnity bill passed before the time for admission.

Macculay supported the application, and submitted that under the special circumstances of this case, the Court would be inclined to permit the proposed examination to take place.

Coleridge, J.—I think he may be examined

de bene esse on the passing of the Indemnity Act.

Application granted.—*Ex parte* Hair, T. T. 1840. Q. B. P. C.

Exchequer of Pleas.

CAPIAS.—SUMMONS.—ARREST.—PRISONER.

A writ of summons must be issued, but need not be served, before a capias is issued; but the Court will compel a plaintiff to serve a defendant with a copy in a reasonable time after issuing the capias.

In this case the defendant had been arrested on a *capias* issued under a judge's order, made in pursuance of 1 & 2 Vict. c. 110, s. 3; but he had not been served with a copy of the writ of summons, either before or since his arrest.

Ball now moved for his discharge. Before any application can be made for a *capias* under this act, a writ of summons must have been sued out. This appears, first, from the words of the 5th section, "that such special order may be made at any time after the commencement of the suit;" and secondly, from its being the practice to entitle in the cause all affidavits used in applying for such a *capias*. Then as the plaintiff is not bound under this act to serve the defendant with a copy of the *capias*, he has no other means of knowing the amount of the debt for which the action is brought, but from the writ of summons.

Parke, B.—No doubt a writ of summons must be issued before any *capias* can be applied for; but must it be served on the party? That is another question. That there is no illegality in taking a party into custody who has not been served with a copy of a writ of summons, appears distinctly from the subsequent clause of the 5th section, which provides expressly that "a defendant in custody on any such arrest, and not previously served with a copy of the writ of summons, may be lawfully served therewith." The inconvenience would be great if parties living, suppose in Northumberland, were not to be allowed to make affidavits, for the purpose of obtaining a *capias*, unless a writ of summons was previously served. But the defendant is certainly entitled to have a copy of the writ of summons served on him, as until then he does not know what he is to enter an appearance or make answer to. You may therefore have a rule to shew cause why the defendant should not be discharged out of custody, unless within four days the plaintiffs serve him with a copy of the writ of summons.

Rule accordingly.

Bell then applied to have the rule drawn up with costs.

Parke, B.—You are not entitled to costs unless you shew some special wrong done to you. If it should appear that the plaintiff has wantonly kept the defendant one moment in prison, the Court will know how to deal with the case, and will visit him with costs.

Rule accordingly.—*Brooke v. Snell*, E. T. 1840. Exch.

Wood v. Hitchings, *exceptions to answer of defendant (Corporation of Gloucester)*—set down May 14
Whiting v. Force, *further directions and costs*—set down May 16

COURT OF QUEEN'S BENCH,

*Trinity Term, 3 Victoria,
8th June, 1840.*

THIS Court will, on the 18th instant and the six following days, except Sunday, hold sittings, and will proceed in disposing of the business in the Court, and hear the Country New Trials, now in the New Trial Paper, and will give judgment in cases which shall then be pending.

The Court will, on Monday the 15th, Tuesday the 16th, and Wednesday the 17th June, take Motions and the Peremptory Paper.

COMMON LAW SITTINGS.

Queen's Bench.

Sittings in and after Trinity Term, 1840.

In Term.

MIDDLESEX. LONDON.
Monday June 15 | Tuesday June 16

After Term.

Thursday June 18 | Friday June 19
(to adjourn only)

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 28th of May and the 1st of June to June the 18th; and all other Causes on the Lists for the 28th of May and the 1st of June, will be taken from day to day until they are tried.

Undefended Causes only will be taken on the 15th of June.

Short Defended as well as Undefended Causes entered for the Sitting on June 16th, will be tried on that day, if the Plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Exchequer of Pleas.

Sittings at Nisi Prius, after Trinity Term, 1840.
MIDDLESEX.

Thursday	June 18	} Common Juries. Revenue & Com. Juries, (Customs.)
Friday	.. 19	
Saturday	.. 20	
Monday	.. 22	} Revenue and Com. Juries, (Excise.)
Tuesday	.. 23	
Wednesday	.. 24	} Common Juries.
Thursday	.. 25	
Friday	.. 26	} Special and Com. Juries.
Saturday	.. 27	

LONDON.

Friday June 19 | To Adjourn only.

Monday	.. 29	} Adjournment Day, Com- mon Juries.
Tuesday	.. 30	
Wednesday	July 1	} Common Juries.
Thursday	.. 2	
Friday	.. 3	} Special and Com. Juries.
Saturday	.. 4	
Monday	.. 6	} Common Juries.
Tuesday	.. 7	
Wednesday	.. 8	} Common Juries.
Thursday	.. 9	
Friday	.. 10	} Common Juries.
Saturday	.. 11	
Monday	.. 13	

The Court will sit at half-past nine o'clock.

RESULT OF THE EXAMINATION.

THE number of candidates who attended at the Law Society on the 9th instant to be examined, was 145; and though we understand there were few very excellent, the examination was on the whole satisfactory, and certificates of fitness were granted to all. There were two persons whose testimonials of service were not deemed sufficient, and two who had given notice did not attend.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Tavistock Small Debts Court.
[Passed.]

House of Commons.

Small Debt Courts for
Liverpool, Marylebone,
Wakefield Manor.
Metropolitan Police Courts.
[In Committee.]
Aston Small Debts Court.
[Passed.]

REMOVAL OF COURTS OF LAW.

Petitions in favour have been presented from the attorneys in
Isle of Wight,
Nottingham.

.. The other Bills remain as in our last report.

THE EDITOR'S LETTER BOX.

The letters of J. W. M.; "Justus;" W. W. E.; C. L. B.; "A Reader;" J. E. jun.; and "A Barrister;" have been received.

The Legal Observer.

SATURDAY, JUNE 20, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LATE ATTEMPT ON HER MAJESTY'S LIFE.

WE have recently had to consider that species of high treason which consists in levying war against the Sovereign,^a but we certainly did not expect that we should have to bring under our readers' notice the law relating to that other branch of it which concerns a direct attempt on the life of the Sovereign. We are sorry to say that we have already had to advert to the law relating to this subject on the occasion^b of the attack on his late Majesty King William, which is as follows:—"The life of the King," says Lord Hale, "who is the head of the body politic, and the cement of the social bond, cannot, in the ordinary course of things, be taken away by treasonable practices, without involving the whole nation in blood and confusion; and, consequently, every stroke levelled at his person is levelled at the public tranquillity." This is the recognized rule of the common law on the subject; but the statute law is even more precise. By the well-known act 25 Edw. 3, st. 5, c. 2, which East calls "the standard of high treason," it is declared to be high treason "when a man doth compass or imagine the death of our Lord the King, and thereof be proveably attainted of open deed by the people." But a late statute (36 Geo. 3, c. 7) is more directly applicable to the late offence; it is thereby enacted (s. 1) that if any person, during the natural life of the king then reigning (Geo. 3), and until the end of the next session of parliament, after a demise of the crown, shall within the realm or without, compass, imagine, invent, devise, or

intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the King, his heirs or successors, he being convicted thereof upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law, shall be deemed, declared, and adjudged to be a traitor." This section of this last act is made perpetual by the 57 Geo. 3, c. 6, s. 1. Under these statutes it has been held, that the mere imagination of the heart, if any open or overt act be done towards effectuating the design, is deemed the same degree of guilt as if carried into actual execution.^c

There are two other acts, which were passed soon after the attempt made by James Hatfield on his Majesty King George the Third, which bear on this subject. By the 39 & 40 Geo. 3, c. 93, it is enacted, that in cases of high treason and misprision of treason, where the overt act alleged in the indictment shall be assassination of the King, or any attempt against his life or person, whereby his life may be endangered, or his person suffer bodily harm, the offender shall be tried in the same manner as if charged with murder, but be punishable as in cases of high treason; and by 39 & 40 G. 3, c. 94, if any person charged with treason shall prove to be insane, the jury, if they acquit him, shall declare whether he was acquitted by them on account of insanity, and the offender shall be kept in custody till his Majesty's pleasure be known, and his Majesty may give an order for the safe custody of such insane person.

^c 1 Hale, 107; 1 Hawk. c. 17, s. 8; 1 East, P. C. 58.

The example of a trial for high treason, the most analogous, as to the description of the offence, to that which is about to be had, is certainly that of James Hatfield, in May, 1800, who made an attempt on the life of George the Third by firing a pistol at him in Drury Lane Theatre. The prisoner, however, in that case was acquitted on the ground of insanity; and from the published accounts of the present case, it would appear that there is no ground for setting up this defence on this occasion.

The Criminal Law Commissioners, in their Fourth Report,^d propose that in the new Digest of the Criminal Law, the division of treason should be strictly conformable to that which they consider to be the real principle of the offence, namely, that the crime should consist wholly, as in the present instance, of a direct attack upon the person or authority of the sovereign as head of the state; and in order to render the law consistent in this respect, they propose to remove from the present list of treasons such offences as do not come within this principle, and to insert them under the heads of felonies or misdemeanors with appropriate punishments.

The person who made the attack would seem to have attempted the life not only of the Queen but of Prince Albert. Of course, the crime of the attempt on the Prince has merged in the greater offence of the attempt on her Majesty. It is to be observed, however, that an attempt on the life of the Prince is not treason, as we already have had occasion to show.^e "A titular king," says Hawkins, "as the husband of a Queen Regnant seems to be within the words (of the stat. 11 Hen. 7, c. 1) yet it is clearly not within the meaning of this law;" and Lord Hale says "The husband of a Queen Regnant is not a King within the law (the Statute of Treasons) for the Queen still holds her sovereignty entirely as if she were sole. *Vide* 1 Mary, c. 2, sess. 3," which is the statute expressly making any attempt on the life of King Philip treason.

The crime for which the present prisoner will be indicted is of the very highest nature in the calendar—high treason of the worst description.

It appears to be questioned whether the pistols were actually loaded with ball, or with any substance that could destroy life, or inflict "grievous bodily harm." Pending this doubt, it has been suggested that the addresses to her Majesty should not be so

framed as to deprive or tend to deprive the accused of any means of a fair and unprejudiced trial.

BUSINESS IN PARLIAMENT.

WE have deeply to regret the state of the public business before Parliament. The whole Session has been wasted in mere party conflicts, to the entire prejudice of the important measures now pending, and there is too much reason to fear that Parliament will shortly be prorogued without settling any of them satisfactorily. First and foremost stands the Lord Chancellor's Bill for the Administration of Justice, which, notwithstanding that the grievance is admitted on all hands, and a part, at least, of the remedy agreed upon, has made but little progress in the Select Committee, which has only had one short meeting. Then the Copyhold Enfranchisement Bills (the one, Lord Brougham's, having been referred to a Select Committee; the other, Lord Redesdale's, standing for a second reading) remain in a dormant state, and, probable as legislation on this subject seemed at the commencement of the Session, we now begin almost to despair of it. Nor is the Lower House a whit more forward in this matter. There have been but few Bills introduced, and of those few we cannot say with certainty that any one will pass into a law. It is true, that when once it is known that the Session is to end, and when once the great party struggles are over, business goes on at a quicker rate; still we much fear that the results of the present Session will be more scanty than almost any preceding one.

A Bill has just been brought in "for making provision as to the office of Master in Chancery in certain cases."

THE LAW OF JOINT-STOCK COMPANIES.—No. IV.

POINTS AS TO RAILWAY COMPANIES.

WE hope to be able to continue this series of papers, so as to give, once in every month, an article collecting all the cases on some branch of it; but this must not prevent us bringing under our readers' immediate notice any recent decisions relating to the general subject. We now propose to mention some points relating to railways; and first, as to the power of a rail-

^d Page 6, as reprinted for this work.

^e See *ante*, p. 67

way company to abandon part of their undertaking.

The case of *Res v. Birmingham Canal Navigation*, 2 Wm. Bla. 708, is somewhat in point. In that case commissioners were empowered to make a canal from a place called New Hall Ring, Birmingham, and from such other places near the town as might be found convenient. The commissioners had begun a cut in another part of the town, and had declared their intention to make no canal to or from New Hall Ring; and a rule was discharged by Lord Mansfield, C. J., for a mandamus to the company to complete the navigation by making a cut to New Hall Ring. His Lordship said the act imports only an authority to the proprietors, not a command. They may desist or suspend the whole work; *a fortiori* any part of it. But it is to be observed, that this was not a case of a private speculation, for the fulfilment of which certain individuals, desirous of profit, had obtained powers from the legislature on stated terms; and it appears also, that the commissioners had a discretion to make a cut in one place or another near Birmingham, "as may be found convenient." With respect to companies established by private speculation, Lord Eldon, in the case of *Blakemore v. Glamorganshire Canal Company*, 1 M. & K. 154, says, "I apprehend those who come for these acts of parliament, do in effect undertake that they shall do and submit to whatever the legislature empowers and compels them to do, and that they shall do nothing else, that they shall do and forbear all that they are thereby required to do and forbear, as well with reference to the interests of the public as to the interests of individuals;" and the same doctrine, says Lord Denman, C. J., in the *Queen v. Eastern Railway Company*, 2 Per. & Dav. 656, was acted on in its fullest extent in *Res v. Cumberworth*, 3 B. & Ad. 108; and in *Lee v. Milner*, 2 Mee. & W. 824. In the case of the *Queen v. Eastern Railway Company*, a company had been empowered by statute to make a railway from London to Norwich and Yarmouth, passing through Colchester, and required to set out any deviations from the parliamentary plan before the 27th of July 1839, and to make their compulsory purchases of land before the 27th July, 1840. The company had for two or three years proceeded with great activity

to complete the line as far as Colchester, but on May 6th, 1839, had not commenced proceedings for carrying on the line below Colchester. This course was approved of by the shareholders at large, and the funds of the company were nearly exhausted, but it appears doubtful whether the company had any *bond fide* intention of completing the entire line. The Court of King's Bench, at the instance of a small proportion of shareholders, and a few land-owners on the line, made absolute a rule for a mandamus to the company to set out their deviation and make their purchases below Colchester. The judgment in this case we first gave in 18 L. O. 151, and it has been subsequently reported in *Regina v. Eastern Counties Railway*, 2 Per. & Dav. 648.

In our fourteenth volume, p. 93, we considered the cases relating to an agreement to withdraw an opposition to a bill in parliament; and we stated that in the case of *Simpson v. Lord Howden*, 1 Keen 583, Lord Langdale, M. R., appeared to think that such an agreement entered into for a pecuniary consideration was invalid. On appeal, however, to the present Chancellor, his Lordship expressed considerable doubt as to the correctness of the Master of the Rolls' opinion, *Simpson v. Lord Howden*, 1 Myl. & C. 101, and 16 L. O. 162. The case has subsequently come before the Courts of Common Law. In the report in the Court of Queen's Bench the following is the statement:—"By indenture between the defendants, who were shareholders in a projected railway, and the plaintiff, a peer of parliament, through whose estate the railway was to pass, it was stipulated on the one hand that he should withdraw his opposition to a bill then before parliament for making the railway according to a certain line, and on the other hand that they should apply the next session for a deviated line; and that in case the bill then in Parliament for the original line should pass during the then present session, they would within six months after its passing pay him 5,000*l.*, as compensation for the damage his estate should sustain by the deviated line, without prejudice to the further compensation to be paid him in the event of the deviated line not being adopted. To a declaration in debt for the 5,000*l.*, alleging that the plaintiff had

withdrawn his opposition, and that the bill had passed, &c., the defendants pleaded—1. That they had abandoned the said deviated line, and had adopted and were endeavouring to procure an act for another line, which would entirely avoid the plaintiff's estate;—2. That the agreement was made secretly, without the knowledge either of those through whose lands the original line was to pass, or of the legislature, and was kept secret till the passing of the act, and that the plaintiff was a peer of parliament. And it was held—1. That the first plea was no answer;—2. As to the second plea, that the concealment of this agreement from the legislature was a fraud, and that the plaintiff could not recover." *Lord Howden v. Simpson*, 2 Per. & Dav. 714. From this decision there has been an appeal to the Exchequer Chamber. And the judgment of the Queen's Bench has been there reversed, and it has been held—1. That the agreement referred to was not illegal on the ground that it had been concealed from parliament, it not appearing on the face of the agreement itself, or from the averment in the second plea, that it was the *intention* of the parties at the time of making it to conceal the agreement. And 2. That for the same absence of intention the concealment from the other land-owners did not vitiate the agreement; and *semble*, that even if such intention had existed, it would not have vitiated the agreement, at least on the ground that it enabled the plaintiff to make a better bargain than other landowners. And 3. That it was competent to the plaintiff, though a peer of parliament, to make the agreement; otherwise, said *Tindal*, C. J., "a peer or member of parliament would be placed in a worse situation than any private individual." Error has been brought in the House of Lords, and the case is there still pending.

While on this subject, we may observe that the Bill to regulate Railways, founded on the recommendations of the Select Committee, (which see, *ante*, p. 49,) has been introduced into the House of Commons, and the superintendence of all railways has been, by this Bill, placed in the Board of Trade. We shall print the Bill the first convenient opportunity.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. II.

3 Vict. c. 15.

TITHE COMMUTATION AMENDMENT ACT.

[Continued from p. 116.]

5. *Certificate of commissioners to be evidence of right of recovery or retainer.*—And be it enacted, that in every such case the production of such certificate as aforesaid, or of an office copy thereof, sealed or stamped with the seal of the said commissioners, shall be sufficient evidence of the right to recover or retain the amount or excess in payment which shall appear by such certificate to have been made by the land owner or his tenant respectively.

6. *Provision for occupying tenant paying (in the place of his landlord) estimated proportion of rent-charge in aid of security.*—And whereas it may happen that a tenant, being an occupier of lands, who shall, by virtue of the provisions of the said first-recited act, be entitled to deduct the amount of any rent-charge from the rent payable by him to his landlord, may be desirous of paying, in exoneration of such security as aforesaid, the proportion of rent-charge to which the lands in his occupation shall be liable; be it enacted that, upon the application in writing of any such tenant, the valuer or valuers shall, in like manner as aforesaid, furnish to such tenant a statement of the probable amount of such proportion of rent-charge as aforesaid, and on receipt thereof the tenant may cause a copy of such statement to be served on his landlord by leaving the same at his usual place of abode, accompanied by a written notice of his intention to undertake the payment of such proportion of rent-charge as aforesaid; and in case the land owner shall not, within twenty-one days after the service of such copy and notice, undertake, by some writing subscribed by him, or his agent lawfully authorized, and served in like manner as aforesaid upon the tenant, to pay the amount set forth in such statement, it shall be lawful for the tenant to undertake the payment thereof, and from time to time to deduct the amount paid by him from his rent until the period at which the half-yearly payment of rent-charge to be made next after the confirmation of the apportionment shall have become due: Provided always, that in every such case the provisions herein-after contained for taking accounts between the person who shall have given such security as aforesaid and the owners of lands subject to the rent-charge shall be applicable to the case of every such land owner from whose rental such deductions shall have been made as aforesaid.

7. *Provision for recovery of such rent-charge from persons giving security for same.*—And be it enacted, that in every such case, if the person liable under such security shall not make due payment to the person entitled to the same according to the tenor of such security, it shall be lawful for the said commis-

sioners, from time to time, as and when any half-yearly payment of such rent-charge shall accrue, and the same or any part thereof shall remain unpaid for the space of twenty-one days from any day fixed for payment thereof, and notwithstanding execution shall have been previously issued in respect of any former arrears, to sue for and recover any such half-yearly payment, or so much thereof as shall from time to time remain unpaid in respect thereof, against the person liable under such security, by taking out a summons, returnable before a judge of any of the superior courts of common law, to compute what is due in respect of such rent-charge; and it shall be lawful for any judge of such Courts, on hearing the parties, or such of them as shall appear, and on production of such security, and proof by affidavit of the amount so due as aforesaid, and of the service of such summons on such person or on any occupier of any of the lands of such person in any such parish, by delivery of the same personally, or by leaving the same at his place of abode, to order that it be referred to the masters of the Court to compute what is due in respect of such security, and to tax the costs of such application, and all such orders shall have the effect of judgments in the superior courts of common law in like manner as rules of such Courts, and execution may issue accordingly; and such security shall be available against such person liable under the same up to and including the half-yearly payment accruing due next before the confirmation of such apportionment, and shall be in full force notwithstanding any change in the party entitled to such rent-charge.

8. *Remedy for the land owner against whom execution has issued.—Provision for taking accounts between the person giving security and the land owners liable to contribute thereto* Period for which security to be available against such owners.—And be it enacted that in every such case the said commissioners shall make due inquiry as to any payment of rent-charge made by any such person in respect of such security previous to the confirmation of the apportionment of such rent-charge, and shall endorse on such apportionment a certificate of such payment, and that the parties entitled to such rent-charge have been duly paid the amount thereof according to the tenor of such security; and such person shall thereupon, after the confirmation of such apportionment, be entitled to recover the amount specified in such certificate as having been paid by him, against the lands of the said parish subject to such rent-charge, in the proportions fixed for payment of rent-charge by such apportionment, by distress and entry on such lands respectively, and shall have the like remedies or modes of recovery as are given to owners of rent-charge for recovery thereof in the said recited acts or any of them: Provided always, that if the owner or occupier of any such lands shall have contributed to the payment of such rent-charge, or of any part thereof, or of the arrears thereof, under such security, or in

exoneration thereof, it shall be lawful for him to take out a summons, returnable before any judge as aforesaid, to stay any proceedings taken by the person liable under such security as aforesaid, for the purpose of taking an account of what he shall have so contributed or paid in respect of such rent-charge or arrears; and it shall be lawful for any judge as aforesaid to refer it to the Masters of the Court to take such account and make all just allowances between the parties; and if, on taking such account, such owner or occupier shall be found to have paid his due proportion, or any amount exceeding the same, according to the proportionate amount of rent-charge fixed on such lands, then it shall be lawful for any judge as aforesaid to stay proceedings, and order payment, by the person liable under such security, of the amount, if any, so overpaid by such owner or occupier, as the case may require, and every such order shall have the effect of a judgment as aforesaid; but if on taking such account the whole or any balance shall be found due from such owner or occupier, then it shall be lawful for such judge to allow the same against such owner or occupier, whose lands shall thereupon be liable to the repayment thereof to the person liable under such security, and who shall be entitled to the said remedies in respect thereof accordingly; and the cost of every such proceeding shall be in the discretion of the judge hearing the same, and shall be added to the amount found due on such order, if he shall see fit so to direct: Provided also, that no such security shall be available by the person liable under the same against any such lands for more than two years payment or arrear of such rent-charge, unless the said commissioners shall, previous to the expiration of two years from the date of such security, have enlarged the operation thereof for any period not exceeding twelve months, by endorsement thereon, under their hands or the hands of any two of them, and which they are hereby authorized to do if they shall so think fit.

9. *If security insufficient, arrears may be recovered as if accruing after apportionment.*—And be it enacted, that if such security shall be insufficient to meet the full amount of payments which shall accrue due in respect thereof, or the person liable under the same shall fail to make good the amount due thereon by the space of twenty-one days next after the date of the confirmation of the apportionment of such rent-charge, it shall be lawful for the person entitled to the benefit thereof to recover the same against the lands of the said parish subject to such rent-charge, in the proportions fixed in such apportionment, by the said remedies or modes of recovery given by the said recited acts, or either of them, in respect of rent-charge fixed under any confirmed apportionment, in like manner as if the amount so due and in arrear had accrued subsequent to the confirmation.

10. *Security to be free of stamp duty.*—And be it enacted, that every security taken by the said commissioners, by virtue of the provisions

of this act, and every assignment thereof, shall be free of stamp duty.

11. *Extension of power to fix sum to be paid after determination of composition.* 2 & 3 Vict. c. 62, s. 10.—And whereas by the lastly recited act the said commissioners are empowered, by any award, or by a supplemental award, after a parochial agreement, in certain cases, and under certain provisions, to fix the sum to be paid in consideration of the time, if any, which may intervene between the termination of any previous agreement or composition for tithes and the time at which any such rent-charge shall commence; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the said commissioners, at any time before the confirmation of the apportionment of any rent-charge, to exercise the said powers so given to them for fixing the sum to be paid for such intervening time as aforesaid, by a supplemental award after an award.

12. *Particulars to be specified as to payment of such sum.*—And be it enacted, that when any such sum shall be fixed to be paid in consideration of such intervening time as aforesaid, either by parochial agreement or supplemental agreement, or by award or supplemental award, the parties by and to whom such sum is to be paid, and the lands in respect of which the same shall be payable, as also the proportionate amount to be paid by each party, shall be specified and set forth in the instrument fixing such sum, or in the instrument of apportionment to be made in pursuance thereof; and in default thereof such sum shall be payable by and to the parties and in the proportions fixed in such apportionment in respect of the rent-charge therein provided for.

13. *Extension of power to fix period for commencement of rent-charge.* 2 & 3 Vict. c. 62, s. 10.—And whereas by the said lastly recited act the said commissioners are enabled by their award, and the tithe owners and land owners by a parochial agreement after an award, are enabled to fix the period at which the rent-charge shall commence, and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the commissioners, by supplemental award, to exercise the powers so given to them for fixing the period at which any rent-charge shall commence, as well after an award as after a parochial agreement, where the same shall not have been previously fixed by any such award or agreement, or by any supplemental award or agreement, under the said recited acts, or either of them, or this act: Provided always, that where the said commissioners shall not have fixed that the period at which any rent-charge shall commence shall be the first day of January next following the confirmation of the apportionment, such period shall be fixed by them on the first day of January preceding such confirmation, or on the first day of April, the first day of July, or the first day of October preceding or following such confirmation, which-

ever of such days may happen nearest to the termination of any previous agreement or composition, or of any customary year of titheing in the parish or district to which such rent-charge shall relate: Provided also, that when any period of commencement shall have been so fixed by the said commissioners in any award or supplemental award, or any day preceding the date thereof, the commissioners shall cause due inquiry to be made as to the value of any tithes rendered in kind, and the amount of any payment in respect of tithe which shall have been made, subsequent to such period of commencement, and prior to the first day fixed for payment of such rent-charge, and shall take into account and allow such value or amount to be deducted from such payment accordingly.

[To be continued.]

NOTICES OF NEW BOOKS.

The Law and Practice as to Costs, with Statutes and Practical Forms. By G. B. Mansel, Esq., Barrister at Law. London: E. Spettigue.

THIS is a remarkably useful book; it was very much needed, and we are glad that Mr. Mansel undertook the task of writing it. He has bestowed great pains and labor in collecting all the authorities, and has arranged his materials in a very clear and concise manner. We wish to see works of this practical kind executed in the same condensed style.

Mr. Mansel states the object and scope of his work thus:

"The following treatise purposes to bring within a condensed view, the law and practice as to costs in the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas at Westminster; the Petty Bag Office in Chancery, the Common Pleas at Lancaster, the Durham Court of Pleas; and upon proceedings in error in the Exchequer Chamber and in the House of Lords. The few existing treatises connected with this subject have become obsolete; and the material changes in the law by statutes, rules of court, and regulations of the masters, have rendered a treatise wholly applied to the important topic of costs imperatively necessary.

"The remarks in detail are intended to apply to process at the suit of the Crown against its debtors and accountants; the mixed actions of dower and *quare impedit*; personal actions, (including the action of ejectment); and (from their having a direct reference to civil rights, although in form crown process) prohibition, *mandamus*, and informations in the nature of *quo warranto*. The inquiry is pursued according to the course of proceeding in an action; and with this end in view, the text has been ranged into chapters, and a short

description of the particular proceedings to which each refers is prefixed. The numbers placed before the contents of the several chapters, refer only to the paragraphs:—The remarks as to the law and practice range over seven chapters; and the eighth contains in full the acts of parliament upon the immediate subject of costs, and all the precedents which, from their being of a practical nature, are in constant use amongst legal practitioners. The law cases referred to in support of the positions in the text, are principally of a recent date, and are in that sense more valuable and important; but whenever any ancient authorities of a leading character exist, they also are referred to. The quotations from the Legal Observer are only made use of in instances where there is not in the more general law reports any case in point; and the other cases referred to as in manuscript, are decisions within the personal knowledge of the Author. The annotations upon the statutes and practical forms are not numerous, and have been introduced solely for necessary explanation, in cases where ambiguities in the wording of the clauses occur."

The first Chapter contains:—1. Proceedings by the Crown. 2. Dower. 3. Quare imipedit.

The second Chapter comprises:

"1. General principles.—2. Uniform practice.—3. Preliminary proceedings.—4. Commencement of action.—5. Staying proceedings.—6. Proceedings on arrest.—7. Particulars of demand.—8. Effect of petition under Insolvent Debtors' Act.—9. Oyer.—Copy 10. Pleadings.—11. Payment into Court.—12. Assets *quando acciderint*.—13. Notices of objections.—14. Warrant of attorney, *cognovit actionem*.—15. Enrolling deed.—16. Demurrer, special case, error in fact.—17.—Trial by record: of peerage.—18. Issue in fact.—19. Costs of the day.—20. Admissions.—21. Witnesses.—22 Record of nisi prius: writ of trial.—23. Changing venue.—24. Remanet.—25. Putting off trial: staying proceedings.—26. Counsel.—27. Proceedings at trial.—28. Amount of debt: damages.—29. Special jury.—30. Certificate of judge: debt &c., under 40s.—31. Action on judgment: malicious injuries to property: as to customs: slander: not setting out tithes.—32. Certificate of judge: debt &c. not exceeding 20l.: infringing patent.—33. Certificate in other cases.—34. By executors—administrators.—35. Several defendants—certificate of judge.—36. Finding of jury.—37. Verdict: several defendants.—38. Ejectment, nonsuit, not confessing lease, entry and ouster.—39. Feigned issue: interpleader act.—40. Defendant (infant), ejectment.—41. Liability of bail.—42. Against executors: administrators.—43. Double, treble costs.—44. Certificate for immediate execution.—45. Writ of inquiry.—46. Motion for new trial, &c.—47. Terms of granting.—48. Judges divided. *Venire de novo*: Arrest of judgment: repleader: judgment *non obstante veredicto*.—49. Judgment according to the "very right

and merits of the case."—50. Judgment *nunc pro tunc*: Vacating proceedings.—51. Time of taxation.—52. Common costs: costs of increase.—53. General costs of the cause: costs of issues.—54. Removal of judgments, rules and orders from inferior courts.—55. Taxation, notice.—56. Bill of costs: affidavit of increase.—57. Scale of taxation.—58. General rules: discretion of taxing officer.—59. Review of taxation.—60. *Allocatur*.—61. Amendments."

This chapter of the work, it will be observed, is a very comprehensive one,—comprising the law and practice relating to the costs of a *plaintiff* in personal actions. The third chapter treats of the costs of the *defendant*, under the following heads:

"1. General rules.—2. Costs on summons.—3. Staying proceedings.—4. Amendment of writ.—5. On arrest.—6. Outlawry: Waiver.—7. On discharge from arrest.—8. Sheriff's and bailiff's fees.—9. Security for costs.—10. Special bail.—11. Demand of declaration.—12. Common counts.—13. Oyer: copy.—14. Payment into Court.—15. *Non pros*: Discontinuing.—16. Motion for judgment "*as in case of a nonsuit*."—17. Costs of the day.—18. Preparatory proceedings before trial.—19. Demurrer.—20. Issue by record: special case.—21. The issue.—22. *Pica quasi darrein continuance*.—23. Demurrer to evidence: bill of exceptions.—24. Nonsuit.—25. Verdict: general costs: pleading issues.—26. General liability.—27. Certificate of Judge.—28. Several defendants.—29. Motions as to new trials, &c.—30. Motions for costs (defendant arrested for more than found due.) 31. Acts relating to courts of request.—32. Waste.—33. Double and treble costs.—34. Taxing costs.—35. Amendment.—36. Error in fact.—37. Satisfaction.

The fourth Chapter relates to costs in incidental proceedings, *viz.*:

1. Arbitration.—2. Attorney's bill of costs: delivery.—3. Power of taxing.—4. Course of proceeding.—5. Costs of taxation.—6. Lien of attorney.—7. Town agent.—8. General regulations: exceptions.—9. Authority of attorney.—10. Order of Judge at Nisi Prius: rule of court.—11. Notice of motion.—12. Moving for rule.—13. Shewing cause.—14. Applications under Interpleader Act.—15. Rules of Court, generally.—16. Attachment: sequestration: distringas.—17. Rule for payment of money or costs: entry of, in Common Pleas Office.—18. Prohibition.—19. *Mandamus*.—20. Information in nature of a *Quo Warranto*.

In the next place, Mr. Mansel proceeds to the subject of execution:

"1. Time of issuing. 2. *Capias ad satisfaciendum*—charging in execution.—3. Discharge under small debtor's act.—4. Costs: expenses of poundage.—5. Entry of judgment: Rule in Common Pleas office.—6. Effect of.—7. Interest.—8. Effect of *ca. sa.*, or charging in execution, or charge on security.—9. Writ in the nature of *elegit*.—10. *Fieri facias*.—

11. Government stock: other like securities.—12. Removal of judgments: Rules and orders from inferior court: (if judge a barrister of seven years standing).—13. Newspaper recognizances.—14. *Levari facias*: beneficed clergyman.—15. Relief and powers under Insolvent Debtor's Act.—16. Costs by way of special damage.

The following chapter treats of costs on proceedings in the Petty Bag Office, the Common Pleas at Lancaster, and the Durham Court of Pleas. Next the costs of proceedings in error in the Exchequer Chamber and in the House of Lords, are noticed. Then follow the Statutes; and lastly, Practical Forms, and a very full Index.

It will thus be perceived that Mr. Mansel has gone over his subject in a very complete manner, and has furnished a Manual of the Law of Costs, which will doubtless find its way into almost every attorney's office.

THE STUDENT'S CORNER.

WILLS ACT.

Sir,

It is presumed that different constructions may be put on the concluding part of the 1st sec. of the 39 & 40 Geo. 3, c. 48. Will some one of your numerous readers be kind enough to say, which will be the proper construction for the following case, in order that justice may be done to the parties.

A. by his will devised lands to trustees to the use of his wife, during her life, and from her death to receive the rents and profits thereof, for the term of twenty-one years, upon trust for children born and to be born on the bodies of certain individuals, and to divide the accumulations amongst them at the end of the twenty-one years after the wife's death. Then he devised the same lands to *B.* for life, and afterwards to *B.*'s eldest son in tail male.

The wife lived thirteen years after the death of testator and counsel is of opinion, that the trust for accumulations will only continue eight years after the wife's death—notwithstanding, that it is partly for the benefit of infants, *secundum* the above act.

The question is, to whom will the profits of the land go, for the void bequest of thirteen years: to the heir at law or to the devisee?

A COUNTRY SUBSCRIBER.

POWER OF SHERIFFS.

1. After the sheriff has abandoned possession, and returned *nulla bona*, can he resume it again under the same judgment? 2. Can the sheriff put in as many men in possession, as he or the plaintiff pleases? 3. Can any person enter, whose name is not upon the warrant? 4. Can the persons or person put in possession, take, and keep exclusive possession

of any room in the house? 5. Can the sheriff's officer prevent the tenant from the use of any part of the goods or chattels, or prevent their removal from one room to another? 6. Can the sheriff's officer or his men, use any part of the goods and chattels, and consume the coals and candles during a reference to the master in Chancery? 7. Cannot the owner cause the sheriff's officer to quit any room that he pleases, and send him to any other room?

The above queries are very important to a large class of readers, and I hope therefore, they will be carefully considered and answered.

A LEGAL INQUIRER.

SELECTIONS FROM CORRESPONDENCE.

ENGLISH STAMPS.—IRISH PROPERTY.

The Irish Stamp Act, 56 G. 3, c. 56, s. 33, provides that no deed or writing shall be given in evidence unless stamped with the proper stamp; but that where deeds or writings shall happen to be executed or written on a *stamp of greater amount*, they shall be considered as duly stamped, except where separate stamps are provided.

Supposing parties living or being at the time in England, should settle property situate in Ireland, and should use English stamps which would be greater in amount than Irish ones; could a settlement so stamped be given in evidence in the courts in Ireland?

The experience of some of your numerous readers, may enable them to answer these questions.

A. B.

SERVICE OF CLERKSHIP.

Is an Articled Clerk disqualified by law from holding the office of Registrar of Births and Deaths, the office of subdistributor of stamps, or the office of insurance agent?

In the particular case on which this application is grounded, these offices (restricted to a small market town) are jointly held by a managing clerk under articles, receiving a salary, but being a man of active and energetic habits and carried on on the premises of the master, they do not in any way interfere prejudicially in the duties of his clerkship, of which fact the master is well satisfied. Yet fearing the force of an objection on these grounds, he solicits (in the absence of any reported case immediately turning upon this point) the benefit of your answer, whether upon his application for admission these matters would be successfully available against him? He is led to think that the sub-distribution and insurance agency are unobjectionable, but not so the office of registrar.

M. J.

[We think the *holding* these offices will not disqualify the party, if the duties performed do not interfere with the service in the proper business of an attorney.]

ED.

*Michaelmas Term.**[Continued from p. 122, ante.]**Clerk's Name and Residence.*

Hoar, Edward, 8, Staple Inn.
 Halford, William, 34, Queen's Square: and Worcester.
 Hensworth, Benjamin, 52, Upper Gower St.
 Humphry, Joseph Thomas, Colechester; Rosoman's Buildings; and Vernon Place.
 Heathfield, William, 44, Collingwood Street; and Burwash.
 Hewitt, Benjamin Bradley, 128, Upper Seymour Street, Euston Square.
 Hall, Richard Hudson, Birmingham.
 Haynes, Joseph, 4, Upper Wharton Street.
 Harris, George William, 16, Gate Street, Lincoln's Inn Fields; and Beccles.
 Higham, John, Leeds.
 Harrison, John, 22, Liverpool Street.
 Hair, Thomas, Kidderminster.
 Hamilton, Sydney Doolan, Temple Street, Inner Temple.
 Hailstone, Edward, Bradford.
 James, Nathan Smith, Hertford.
 Izod, Alfred, 31, Mornington Place; and Great Hampton.
 Jones, James William, 8, Barnsbury Place, Islington; Campden.
 Ingram, John Richard, 20, Ely Place; George Street; and Windsor Terrace.
 Jackson, William Windale, 11, Park Street, Camden Town.
 Kingdon, James Smith, 26, Chancery Lane.
 Kemp, George Baring, 35, Clarendon Street; Brighton; and Naples.
 Latter, Robinson, 5, Adelphi Terrace.
 Liddell, Christopher, the younger, 12, Sussex Street; and Newcastle-upon-Tyne.
 Lumb, William, the younger, 35, Wakefield Street; Whitehaven; 24, Gloucester Street; 12, Lamb's Conduit Street.
 Law, Charles, 9, Great Ormond Street; and Kidlington.
 Leighton, Thomas, 26, Surrey Street; Cheltenham; 1, Soley Terrace; and 16, Essex Street.
 Lees, Charles, Bradford.
 Leman, William, Newcastle-under-Lyme; and Shrewsbury.
 Mercer, Thomas, 1, Millman Street, and Long Buckley.
 Maxstead, George William, Winterton, Lincoln.
 Mousley, John Hardcastle, Derby.
 Mathew, Henry Pynsent, 42, Burton Street; Burton Crescent; Witheridge; 38, Madox Street; and 14, Featherstone Buildings.

To whom articles and assigned.

William Waterman, Tenterden; assigned to Bransby William Powys, 8, Staple Inn.
 Thomas France, Worcester.
 Samuel Oliver, 83, Hatton Garden; assigned to James Patten, 76, Hatton Garden.
 George Humphry, College Hill.
 James Philcox, Burwash; and John Baldock, Burwash.
 Thomas Hewitt, Bread Street; assigned to James Bourdillon, Bread Street.
 George Augustus Page, Birmingham.
 John Carlon, 6, Chancery Lane.
 Samuel Wilton Rix, Beccles.
 Edward Barr, Leeds; assigned to John Clayton, Wetherby.
 Lawrence Harrison, Penrith.
 George Pryce Hill, Worcester; assigned to Henry Maddocks Daniel, Worcester and Kidderminster.
 George Joseph Pitman, Barnstaple.
 Samuel Hailstone, Bradford.
 Richard Lovell Browne, Furnival's Inn; assigned to Elias Joseph Silvester, Furnival's Inn.
 Benjamin Workman, Evesham.
 Benjamin Workman, Evesham.
 William Hodgson, Carlisle; assigned to George Bowyer, Tokenhouse Yard.
 William Newton, South Square.
 Samuel Kingdon, the younger, Exeter; assigned to Henry Robert Burfoot, King's Bench Walk.
 Joseph Maynard, Mansion House Place; assigned to Frederick Lewis Austen, Ely Place.
 George Frederick Prince Sutton, 6, Basinghall Street.
 Charles Griffith, Newcastle-upon-Tyne.
 Peter Hodgson, Whitehaven.
 Daniel Godfrey, Abingdon.
 Edmund Lambert Newnan, Cheltenham.
 William Hudson, Bradford.
 T. Curtis Leman, and J. Leman, Bristol.
 Sommersby Edwards, Long Buckley.
 George Maxstead, Lincoln.
 William Eaton Mousley, Derby.
 Philip Mules, Honiton; assigned to William Rodham, Wellington; assigned to William Comins, Witheridge.

[To be continued.]

CIRCUITS OF THE JUDGES.

SUMMER CIRCUITS, 1840.	N. WALES.	S. WALES.	MIDLAND.	HOME.	OXFORD.	NORFOLK.	WESTERN.	NORTHERN.
	Ld. Denman	J. Erskine.	LC J Tindal J. Littledale	Ld. Abinger. B. Gurney.	B. Parke. J. Williams.	B. Alderson. J. Paterson.	J. Coleridge J. Maule.	J. Coltman B. Rolfe.
Sat. July 11	-	-	-	-	-	-	Winchester	York
Tuesday 14	-	-	-	Hertford	Abingdon	Buckingham	-	-
Wednesday 15	-	-	-	-	-	-	-	-
Thursday 16	-	Cardiff	-	Chelmsford	Oxford	Bedford	-	-
Saturday 18	-	-	-	-	-	-	-	-
Monday 20	-	-	Northamp-	-	-	-	Dorchester	-
Wednesday 22	-	-	[ton]	-	-	Huntingd'n	-	-
Thursday 23	-	Cardmarthen	-	Maldstone	Worcester	-	Exeter & [city]	-
Friday 24	-	-	Oakham	-	[city]	Cambridge	-	-
Saturday 26	Newtown	-	Lincoln and [city]	-	Stafford	-	-	Durham
Tuesday 28	-	-	-	-	-	-	-	-
Wednesday 29	Dolgelly	Haverford-	-	Lewes	-	-	-	-
Thursday 30	-	[west&town]	Nottingham	-	-	-	-	-
Friday 31	-	-	[and town]	-	-	-	-	Newcastle & [town]
Sat. August 1	Carnarvon	-	-	-	-	Norwich & [city]	Bodmin	-
Monday 3	-	-	Derby	Guildford	-	-	-	-
Tuesday 4	-	Cardigan	-	-	Shrewsbury	-	-	Carlisle
Wednesday 6	Beaumaris	-	-	-	-	-	-	-
Thursday 7	-	-	-	-	-	Ipswich	-	-
Friday 7	-	-	Leicester & [B.]	-	-	-	-	-
Saturday 8	Kuthin	Brecon	-	-	Hereford	-	Wells	Appleby
Tuesday 11	-	-	-	-	-	-	-	Lancaster
Wednesday 12	Mold	Prestelgn	Coventry & [Warwick]	-	Monmouth	-	-	-
Saturday 15	Chester	Chester	-	-	Gloucester	-	Devizes	-
Monday 17	-	-	-	-	[& city]	-	-	Liverpool
Thursday 20	-	-	-	-	-	-	Bristol	-

SUPERIOR COURTS.

Queen's Bench.

[Before the Four Judges.]

CRIMINAL INFORMATION.—PRACTICE.

A party applying for a criminal information and proceeding on the 6 & 7 W. 4, c. 76, must not only produce a certificate from the Stamp Office according to the terms of the 8th sec. of that statute, but he must also annex to his affidavit a copy of the paper to which such certificate relates.

He must also draw up the rule as "upon reading the paper, &c."

In this case a rule had been obtained calling on the defendants to shew cause why a criminal information should not be filed against the defendants, for the publication in their paper called Woolmer's Exeter and Plymouth Gazette, of an article alleged to be a libel upon certain persons forming part of the board of guardians of the Crediton union.

Mr. Theiger and Mr. Butt appeared to shew cause against the rule; but in the first instance relied on a preliminary objection. The objection in this case is that there is no proper proof of the parties complained against being the authors of the publication. The affidavits on which the rule has been obtained only state that the deponents who complain of the publication have read a certain article in the newspaper, and then comes an affidavit from the clerk of the attorney, who states that he applied to the commissioners of stamps for a certified copy of the affidavit of the proprietorship of the paper, which affidavit is then set out at full length. No copy of the paper itself is annexed to this affidavit, but there is a copy of the article from a paper which the deponents allege that they have seen. That is not sufficient; publication may be proved at

common law or under the statute 6 & 7 W. 4, c. 76. The 8th section of that statute regulates this matter, and provides for declarations to be made by the proprietors of a newspaper, and certified copies thereof to be filed and admitted in evidence against the persons making the same. It then proceeds thus: "and whenever a certified copy of any such declaration shall have been produced in evidence as aforesaid against any person having signed and made such declaration, and a newspaper shall afterwards be produced in evidence, entitled in the same manner as the newspaper mentioned in such declaration is entitled, and wherein the name of the printer and publisher, and the place of printing mentioned in such declaration, whether such title, name, and place printed on such newspaper shall be set forth in the same form of words as is contained in the said declaration or in any form of words varying therefrom, it shall not be necessary for the plaintiff or prosecutor &c. to prove that the newspaper to which such action &c. may relate was purchased of the defendant or at any house, shop, or office belonging to or occupied by the defendant, &c." Here the paper has not been produced, and the statutory mode of evidence has not been complied with. In *The Queen v. Baldwin*^a it was held that an affidavit similar to the present was insufficient. The same rule had previously been held in *The King v. Francys*^b and *The King v. Donnison*,^c which were decided on the 38 Geo. 3, c. 76, and the cases must be applicable now, for that statute has since been incorporated into the 6 & 7 W. 4, c. 76. The rule must on this objection be discharged.

The Attorney General, Sir F. Pollock, and Mr. Cockburn, in support of the rule.—When

^a 8 Adol. & El. 168; 1 Wil. Wol. & H. 153.

^b 2 Ad. & El. 49. ^c 4 Barn. & Ad. 698.

this rule was moved for, a copy of the paper was produced, the libel was read from that copy to the Court, and the copy itself was handed in, together with the affidavits, to the officer of the Court. There need be no affidavit that the copy produced corresponds with that mentioned in the certificate. That fact may be shewn by the actual inspection of the paper. The paper is in possession of the Court, and, though not actually on the files of the Court, is like an exhibit; it is something put in evidence over which the Court has complete jurisdiction. The cases cited do not apply. In *The Queen v. Baldwin* the objection was that there was no stamp-office affidavit at all, and as the rule had been granted on insufficient proof, it was necessarily discharged when that insufficiency was brought to the attention of the Court. In *The King v. Franceys* the paper produced did not correspond with that set forth in the stamp-office affidavit, and it was to meet the objection raised in that case that the words of the 8th sec. of the 6 & 7 W. 4, c. 76, were introduced as to the two copies varying in any respect from each other. And *The King v. Donnison* merely decided that as to this point the same rule which applied at Nisi Prius on prosecutions for libel applied on motions before the Court for leave to file criminal informations. The practice now pursued is that which has always hitherto been observed, and it does not appear that a copy of the newspaper was ever before annexed to the affidavit; what has been done is therefore sufficient.

Lord Denman, C. J.—It appears to me that what has been done is not sufficient. The Court cannot see anything but through the medium of an affidavit. There is none in this case which fully brings before the Court the particular paper that answers the description given by the defendants in their affidavit in the Stamp Office, of the publication of which they are the proprietors. I do not think that there is enough to bring this case within the eighth clause of the statute. [His Lordship read the words of the section.] There ought either to be the original paper annexed to the affidavit and sworn to, which is the proper manner of proving it,—and in passing I must say, that I do not admit that it will be enough to produce a copy of what is called the libellous paper, or at least it must be filed with the other affidavits, and further it is essential in my opinion that the rule should be drawn up, “on reading the newspaper.” We cannot go into any discussion on the admission of any document which is not referred to in the affidavits themselves. Whatever may have been the former practice, this must now be considered a general rule, but the reasons for it are peculiarly strong with regard to newspapers, respecting which we ought to be particularly cautious; for we know that in practice, the production of one paper is generally thought sufficient evidence on which to fix the publisher. But how terribly the interests of parties might be affected, if one paper was mentioned at the time the rule was moved for, and there was

even a possibility of another paper being substituted for it! This day we have had a case in which, by a mistake one affidavit was put in for another; and that without referring to the possibility of *mala fides*, might be the case with respect to papers. The cases that have been referred to, do not come up to this point. I think the objections here made are good, and that the rule must be discharged.

Mr. Justice Littledale.—I do not think that what has been brought before the Court here is sufficient. The act of parliament speaks of the paper being given in evidence; is it given in evidence here? It is true that the affidavit is made to refer to the paper, and to give some extracts from it, and then it seems that when the motion was made the paper was handed up to the Court; but we could not see that what was so handed up was a copy of the very paper charged as libellous. But then that copy itself is not annexed to the affidavit, nor is it marked as an exhibit in the case. It might have been sufficient if it had been so marked and left with the Court, so as to be referred to, and to form part of the proceedings in Court. We must see that this paper has been given in evidence, for we are here in the same situation as a grand jury would be, in the case of having to consider the finding of an indictment. The parties must in such a case give the paper in evidence, as the foundation of the proceeding. And this Court must in like manner have the paper under its consideration. The merely having it for the inspection of the Court is not sufficient. It seems to me that what has been done here is wrong. The objection is not often made, but when it is made it must be considered. Then there is the other objection, that the rule is not drawn up on reading the paper alleged to be libellous. I think that the rule ought to have been in that form, and that not being so, it is bad.

Mr. Justice Patteson.—In a case of this kind, the party prosecuting must proceed under the statute, or by the rules of the common law, in order to shew that the other party has been guilty of a publication of the libellous matter. So far as the Court is concerned this rule was properly granted. All things required to be done, were done at the time of the motion, and we saw that the paper produced did correspond with that which was described in the affidavit. But it is not sufficient that the party should procure the rule properly: he must draw it up properly, and proceed properly afterwards; and it is on that point he fails, and is not in a situation to make his rule absolute. There is not one rule of practice more clear than this, that you cannot read a document which is not referred to in the affidavits on which the rule has been obtained. It would be most dangerous if that could be done. It is said not to be the practice to file documents which have not been referred to in the affidavits; but here we are on the terms of a statute, and I think that the documents here meant to be referred to ought to have been filed. Then again the rule here is not drawn.

upon reading the affidavits. That omission I think to be a serious defect. It would be so even at common law; for if this paper was read, it ought to have been so stated.

The Queen v. Woolmer and another, T. T. 1840. Q. B. F. J.

JUSTICE OF THE PEACE.

A justice of the peace cannot, on the information of another person that A. B. can give material evidence on an indictment, issue a warrant to compel A. B. to find sufficient sureties to appear and give evidence on such indictment.

Whether the justice has power to issue such a warrant or not, he can only have it upon his personal acquaintance with the fact, that A. B. can give such evidence.

This was an action of trespass. The defendant, who was a magistrate of the county of Carmarthen, pleaded first, not guilty; and secondly, that the plaintiff had not sustained greater damage than 5*l.* which he paid into Court. The plaintiff replied a similitur to the first plea, and took issue on the second. The cause was tried at the Caermarthen assizes, in 1838, before Mr. Baron Gurney, when it appeared that the defendant having had information laid before him, of an assault having been committed on a Mr. Adams, another magistrate of the same county, and having been informed that several persons, one of whom was the plaintiff, could give evidence on the subject of the assault, issued a summons, dated on the 10th of October, 1837, reciting the above facts, and declaring that the plaintiff and the other persons were "material witnesses to be examined concerning the same," and proceeding thus: "These are therefore to require you to summon the said Wm. Evans, &c. &c., to appear before me or any others of her Majesty's justices of the peace for the said county, at the town hall in the town and parish of Llanelly, in the said county on Friday next, the 13th day of October instant, at the hour of eleven in the forenoon of the same day, to testify the truth according to their respective knowledge concerning the premises." The summons not being obeyed by the plaintiff, the defendant issued the following warrant, directed to the constables of the county of Carmarthen. "Whereas Edward Adams, of &c. in the said county, Esq., hath made oath unto me John Hughes Rees, one of her Majesty's justices of the peace in and for the county of Caermarthen, that on the 8th day of August last he was violently assaulted whilst in the execution of his duty as a magistrate, &c., and that Wm. Evans &c., is a material witness in the premises. And whereas, I did thereupon issue my summons and require the said Wm. Evans to appear at a time and place therein mentioned, to testify his knowledge in the said assault, and it has been proved before me on oath that the said summons was duly served, but that the said Wm. Evans did not then and there appear to testify his knowledge as aforesaid, but that the said W. Evans said that he would not appear pursuant to the said sum-

mons; and whereas it is necessary for the ends of justice that the said Wm. Evans shall appear at the next assizes to be held for this said county, then and there to testify his knowledge concerning the said assault. These are to command you the said constables to bring the said Wm. Evans before me or some other of her Majesty's justices of the peace &c., to find sufficient bail to appear and give his evidence at the next assizes for this said county, and testify his knowledge concerning the said assault &c." Under this warrant the plaintiff was apprehended on the 25th of October, taken before the magistrate, and detained till the 27th of that month. The learned Judge held the warrant to be illegal, and the plaintiff therefore had a verdict for 20*l.*, which sum included the 5*l.* paid into Court. A rule had since been obtained for a new trial.

Mr. E. V. Williams, who appeared to shew cause against the rule, was stopped.

Mr. Chilton and Mr. Evans, in support of the rule.—It is clear that magistrates may deal in this manner with recusant witnesses, or the ends of justice may be defeated. It is stated in Hale* that it is fit that the justices take a recognizance of witnesses to appear and give evidence at the next session of the peace or gaol delivery, as the case shall require. Dalton^b was an authority to the same effect, and Hawkins adopts that opinion.^c The power of a magistrate in these cases was fully considered in *Watson and Wife v. Bennett*,^d where it was held that a justice of the peace may commit a *feme covert* who is a material witness upon a charge of felony brought before him, and who refuses to appear at the sessions to give evidence, or to find sureties for her appearance.

Lord Denman, C. J.—I do not mean to throw any doubt upon the power of a justice to do all that is necessary to compel the attendance of a witness whom he believes capable of giving material evidence at a trial; but this case is not one of that sort. If it had been proved that the plaintiff here had been examined before the justice, that the justice believed him capable of giving material evidence, and that he had refused to attend and give it, I think that the justice might lawfully have issued his warrant upon such refusal. But nothing of that sort has occurred here. The justice has chosen to take it for granted that the defendant is in fact a material witness, with which fact it is not possible that he should himself have been acquainted; and then he issues an order to the plaintiff to be brought up, not for the purpose of giving evidence, but of giving sufficient bail to appear and give evidence. So that by such a proceeding, a man who cannot find a sufficient person to answer for his appearance may be committed to prison, though he is perfectly ready and willing to give his evidence. The decision does not come at

* 2 Hale, P. C. ch. 14, p. 121.

^b Ch. 90.

^c B. II. c. 8, s. 34.

^d 3 Maule & S. 1.

all in conflict with the case of *Bennett v. Watson*,* for there the woman had done all in her power to defeat justice by declaring that she would not attend at the sessions to give her evidence. The other judges concurred.

Rule discharged.—*Evans v. Rees, Esq.*, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

MANDAMUS.—LANDLORD AND TENANT.—JUSTICES.

An error in the discretion of magistrates, in refusing to give possession of premises, pursuant to 11 G. 2, c. 19, s. 60, is not a ground for issuing a mandamus to compel them so to do.

In this case a proceeding had been taken by a landlord to recover possession of premises pursuant to the 11 Geo. 2, c. 19, s. 60, the possession being vacant, and no sufficient distress being on the premises. An application was made to justices, pursuant to the act, to view the premises, and give the requisite notices. The first day the magistrates proceeded to the premises, and only affixed the notices. On the second occasion, they went to the premises for the purpose of delivering possession of the premises. When they arrived there, the tenant appeared at the window, and said he was there. The justices were of opinion that they could not proceed to give possession of the premises under those circumstances, and accordingly withdrew.

Watson now moved for a rule to shew cause why a writ of mandamus should not issue, commanding the magistrates to give possession of the premises to the landlord, on the ground that the mere fact of the tenant appearing on the premises in the manner described, did not authorize the magistrate to decline to give possession.

Williams, J.—Perhaps the magistrates may have done wrong, or at least acted incorrectly, in not giving possession; but in my opinion I am not therefore authorized in ordering a mandamus to issue.

Rule refused.—*Ex parte Fielder*, E. T. 1840. Q. B. P. C.

STRIKING ATTORNEY OFF THE ROLL.—TAKING OUT CERTIFICATE.

An attorney proposing to be struck off the roll at his own request, need not swear that he has taken out his certificate, if he swears that he has been duly admitted, and that he expects no proceeding to be commenced against him.

F. Williams moved to strike an attorney off the roll at his own request, for the purpose of retiring from the profession. The affidavit on which the application was founded, stated that the applicant had been regularly admitted; that he had practised; that no proceedings had been commenced or were pending against him, nor did he expect any. The affidavit, however, did not state that he had taken out his certificate.

Williams, J., (after consulting with Mr. Hill.) I think that the omission is not material, taking the whole affidavit together.

Application granted.—*Ex parte Partridge*, T. T. 1840. Q. B. P. C.

PRISONER.—SMALL DEBTOR.—JUDICIAL NOTICE.—MARSHALL.

The Court will take judicial notice of the hand-writing of the clerk of the papers, certifying a copy of causes on an application to discharge a defendant under the 48 G. 3, c. 123.

In this case the defendant had been detained in execution for a sum not exceeding 20l., during a period of twelve successive calendar months.

Knowles now moved to discharge the defendant out of custody. All the papers were regular; there was one peculiarity in the case, which was, that there was no affidavit of verification of the signature of the clerk of the papers, who was the deputy of the marshal. It was submitted that where the party was in the custody of the marshal, no such affidavit was necessary, as the Court would take judicial notice of the handwriting of their own officer; this could not be the case if the defendant was in the custody of another gaoler.

Coleridge, J.—That is sufficient, the rule may be granted.

Rule granted.—*Alcock v. Whatmore*, T. T. 1840. Q. B. P. C.

Common Pleas.

ATTACHMENT FOR NON-DELIVERY OF DEEDS AND PAPERS BY ATTORNEY.—SUFFICIENCY OF DEMAND.

In support of an application for an attachment against an attorney for not delivering up papers pursuant to an order of a Judge, subsequently made a rule of Court, by which the attorney was required to deliver all deeds in his possession of the lessor of the plaintiff, on payment of the amount of the Master's allocatur, it was sworn that copies of the order and rule were served upon the attorney, and the demand made by a person who paid the amount of the allocatur: Held, that as there was no proof of the authority of the person paying to receive the papers on behalf of the lessor of the plaintiff, the demand was insufficient.

Atcherley, Serjt. shewed cause against a rule obtained by *Storks, Serjt.*, calling upon Mr. Matthew Sykes, an attorney of this Court, to shew cause why an attachment should not issue against him for not delivering up certain deeds and writings to the lessor of the plaintiff, and why he should not pay the costs of the application. The rule had been obtained upon the affidavits of the lessor of the plaintiff, and of a person named Tilling, who described himself as a hair dresser. The former stated that he had formerly employed Mr. Sykes as his attorney in this cause, but that in consequence of a dispute having arisen between them, he changed his attorney. The latter

subsequently obtained the delivery of a bill of costs from Mr. Sykes, and, upon its being taxed, its amount was found to be 46*l.* 4*s.* On the 31st August 1839, an order was obtained from a learned Judge at Chambers, directing Mr. Sykes to deliver up certain deeds, papers and writings of the lessor of the plaintiff, in his possession, upon payment of the amount of the Master's *allocatur*. Tilling then swore that by the direction of the lessor of the plaintiff, he proceeded to the office of Mr. Sykes and paid him 46*l.* 4*s.*, the amount of the *allocatur*; that "he then demanded of Mr. Sykes all papers and writings in his custody or power, belonging to Mr. Hickman, which he peremptorily refused to give up." He also stated that subsequently, on the 29th of May, he served Mr. Sykes with a copy of the order and rule of Court, shewing him the originals at the same time; but that then again he did not comply with the demand made. It was submitted that these affidavits contained no proof of a sufficient demand for the delivery of the papers. There ought to be a distinct authority in the person making the demand, from the person, on whose behalf it was made, disclosed to the attorney, shewn in the affidavit; but it was not even sworn that the application was made for Mr. Hickman.

Storks, Serjt.—The rule of Court ordered that the papers should be delivered up, upon the payment of the amount of the *allocatur*. The condition of that payment was the delivery of the papers, and the attorney having accepted the money, was bound to hand over the papers to the person from whom he received it, who, from his being authorized to make the payment, must be taken to have sufficient authority to receive the papers. [*Tindal, C. J.*—The rule is, that the person may make a demand upon the attorney by authority of a letter of attorney only, a copy of which shall be served upon the attorney, and the original of which shall be produced.] That was the general rule, but this case did not come within its operation, by reason of the explicit terms of the order, and rule of Court, which in effect bound the attorney to deliver the papers to the person who paid the money. [*Mauie, J.*—But the attorney is further bound to take care to hand them over to such a person only as is authorized to receive them. The master may have ordered only *1*s.** to be paid; can it be said, that the attorney would be bound to hand over the papers to any person who tendered him that amount?] The authority to pay the money, must be taken to be sufficient to include that to receive the papers.

Tindal, C. J.—I think the demand proved is not sufficient. The papers are only to be obtained upon proper application, for although the lessor of the plaintiff may have sufficient confidence in Tilling to entrust him with the money, to pay the amount of the master's *allocatur*, it may be, that he would not like to entrust him with possession of the title deeds of his estate. We cannot bring the attorney into contempt upon such slight grounds.

Rule discharged—*Doe dem. Hickman v. Hickman, T. T. 1840. C. P.*

CHANCERY SITTINGS.

After Trinity Term, 1840.

Before the Lord Chancellor.

AT LINCOLN'S INN.

Friday	June 19	} Appeals and Causes.
Saturday	.. 20	
Wednesday	.. 24	} First Seal.—Appeal Motions and Appeals and Causes.
Thursday	.. 25	
Friday	.. 26	} Appeals and Causes.
Saturday	.. 27	
Monday	.. 29	
Tuesday	.. 30	
Wednesday	July 1	
Thursday	.. 2	
Friday	.. 3	
Saturday	.. 4	} The Second Seal.—Appeal Motions and ditto.
Monday	.. 6	
Tuesday	.. 7	} Appeals and Causes.
Wednesday	.. 8	
Thursday	.. 9	
Friday	.. 10	
Saturday	.. 11	
Monday	.. 13	
Tuesday	.. 14	} The Third Seal.—Appeal Motions and ditto.
Wednesday	.. 15	
Thursday	.. 16	
Friday	.. 17	
Saturday	.. 18	
Monday	.. 20	
Tuesday	.. 21	} Appeals and Causes.
Wednesday	.. 22	
Thursday	.. 23	
Friday	.. 24	
Saturday	.. 25	
Monday	.. 27	
Tuesday	.. 28	} The Fourth Seal.—Appeal Motions and ditto.
Wednesday	.. 29	
Thursday	.. 30	Petitions.

The Court will not sit after Saturday the 8th of August.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the Vice Chancellor.

AT LINCOLN'S INN.

Wednesday	June 24	} The 1st Seal—Motions.
Thursday	.. 25	
Friday	.. 26	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 27	
Monday	.. 29	
Tuesday	.. 30	
Wednesday	July 1	
Thursday	.. 2	
Friday	.. 3	
Saturday	.. 4	} The 2d Seal—Motions.
Monday	.. 6	
Tuesday	.. 7	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	.. 8	
Thursday	.. 9	
Friday	.. 10	
Saturday	.. 11	
Monday	.. 13	
Tuesday	.. 14	

Wednesday ..	15	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday ..	16	
Friday ..	17	
Saturday ..	18	} The 3d Seal—Motions.
Monday ..	20	
Tuesday ..	21	
Wednesday ..	22	} Pleas, Demurrers, Exceptions, Causes and Further Directions.
Thursday ..	23	
Friday ..	24	
Saturday ..	25	} The 4th Seal—Motions.
Monday ..	27	
Tuesday ..	28	
Wednesday ..	29	} Petitions.
Thursday ..	30	

The Vice Chancellor will hear Short Causes and Unopposed Petitions previous to the General Paper every Friday during the Sittings.

After Term, until the First Seal, his Honor will hear Motions and other matters, *by order*.

The Court will not sit after Saturday the 8th of August.

Before the Master of the Rolls.

AT THE ROLLS.

Wednesday June 24	Motions.
Thursday .. 25	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday .. 26	
Saturday .. 27	
Monday .. 29	} Motions.
Tuesday .. 30	
Wednesday July 1	
Thursday .. 2	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday .. 3	
Saturday .. 4	
Monday .. 6	} Motions.
Tuesday .. 7	
Wednesday .. 8	
Thursday .. 9	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday .. 10	
Saturday .. 11	
Monday .. 13	} Motions.
Tuesday .. 14	
Wednesday .. 15	
Thursday .. 16	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday .. 17	
Saturday .. 18	
Monday .. 20	} Motions.
Tuesday .. 21	
Wednesday .. 22	
Thursday .. 23	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday .. 24	
Saturday .. 25	
Monday .. 27	} Motions.
Tuesday .. 28	
Wednesday .. 29	
Thursday .. 30	Petitions in Gen. Paper.

Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

Orchequer Equity.

Sittings after Trinity Term, 1840, at Serjeant's Inn Hall, Chancery Lane.

Mr. Baron Alderson.

Thursday, June 18	Petitions and Motions.
Friday	19 { Further Directions and Exceptions to Reports.

Lord Abinger.

Tuesday	23 { Petitions and Motions. Further Directions and Exceptions to Reports, Pleas, Demurrers and Exceptions, and Short Causes.
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Mr. Baron Alderson.

Wednesday, July 1	Petitions and Motions.
Thursday	2 { Cheslyn v. Dalby, Further Directions.
Friday	3 { Cheslyn v. Dalby, and Further Directions and Exceptions to Reports in other Causes.
Saturday	4 { Cheslyn v. Dalby, and Pleas, Demurrers and Exceptions.
Monday	6 { Knight v. Marquis of Waterford, part heard.
Tuesday	7 { Knight v. Marquis of Waterford, and Causes.
Wednesday	8 { Causes.
Thursday	9 { Causes.
Friday	10 { Causes.
Saturday	11 { Further Directions and Exceptions to Reports, and Pleas, Demurrers, and Exceptions.
Monday	13 { Petitions and Motions.
Tuesday	14 { Petitions and Motions.

COMMON LAW SITTINGS.

Queen's Bench.

Sittings after Trinity Term, 1840.

MIDDLESEX.

Common Juries.

Thursday, June 18.—Short Causes from Monday, June 8th, and from the Third Sitting, all with Judgment of the Term.

Thursday June 25	} Common Juries.
Friday	
Saturday	
Monday June 29	} Special Juries.
Tuesday	
Wednesday July 1	
Thursday	2

LONDON.

Common Juries.

Adjournment-day—Friday, July 3.

There may be a further postponement to Monday, July 6th.

Last day of Sitting—Wednesday, July 15th.

Common Pleas.

Sittings after Trinity Term, 1840.

MIDDLESEX.

Common Juries.

Thursday June 18	Saturday June 20
Friday	19 | Monday
	22

LONDON.

Common Juries.

Adjournment-day—Tuesday, June 30th.

COMMON LAW ORDER OF BUSINESS IN VACATION.

Common Pleas.

Trinity Term in the 3d year of the Reign of Queen Victoria.

THIS Court will, on Tuesday the 23d day of June next, hold sittings, and will proceed in disposing of the business now pending in the Paper of New Trials on the same 23d, and on the six following days of the same month, (Sunday excepted) commencing with the country New Trials.

N. C. TINDAL.
S. B. BOSANQUET.
T. ERSKINE.
W. H. MAULE.

Exchequer of Pleas.

Trinity Term, 3d. Victoria.

This Court will, on Wednesday the 24th day of June instant, hold sittings and will proceed in disposing of the business now pending in the paper of New Trials on the said 24th day of the said month and the following days, viz. the 25th, 26th, 27th, 29th, and 30th June, and on the 25th day of the same month and the said following days, will proceed in disposing of the business now pending in the Special Paper.

Dated, the 16th June, 1840.

ABINGER.
E. H. ALDERSON.
J. GURNY.
R. M. ROLFE.

LIST OF LAW-BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.
[In Select Committee.]
For facilitating the Administration of Justice.
[In Select Committee.]

Lord Chancellor.

Indemnity to Clerks of Attorneys, &c.
[Passed.]

For the commutation of Manorial Rights.
[For second reading.] Lord Redesdale.
Vagrants' Removal.
[For third reading.]

To augment the Maintenance of the poor Clergy.
[For second reading.]

House of Commons.

Small Debt Courts for
Liverpool,
Marylebone,
Wakefield Manor.

Metropolitan Police Courts.

[In Committee.]

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

To improve the High Court of Admiralty.

[For third reading.]

Costs in Frivolous Suits.

[For third reading.]

Rated Inhabitants Evidence.

[In Committee.]

Amendment of Inclosure Acts.

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

[In Committee.] Lord J. Russell.

To extend Freeman and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands.

Mr. Handley.

[In Committee.]

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

To consolidate and amend the Law of Sewers.

[In Committee.]

Summary Conviction of Juvenile Offenders.

[In Committee.] Sir E. Wilmot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage.

Mr. W. Miles.

To abolish capital punishment in all cases except Murder. Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[In Committee.]

Settled estates drainage and improvement

[Passed.]

To exempt stock-in-trade and other personal property from being liable to be rated to the relief of the poor. The Attorney General.

REMOVAL OF COURTS OF LAW.

Petitions in favour have been presented from the attorneys in
Stamford,
North and South Shields Kent Law Society.

THE EDITOR'S LETTER BOX.

We hope to find room in an early number for several letters which have been unavoidably deferred. "Scrutator," amongst the rest, shall not be forgotten.

We stated the questions at the last examination, in nearly the terms in which they were given out.

The letters of W. H.; L. W.; and "Latitat;" are under consideration.

Erratum.—p. 112, last line but one of first column, for "discharged" read "disobeyed."

The Legal Observer.

SATURDAY, JUNE 27, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agimus.

HORAT.

THE SWORN CLERKS IN CHANCERY.

ALTHOUGH it may seem, at the end of the present session of Parliament, that little or nothing has been done in the cause of Chancery Reform, and there is too much to fear that the Lord Chancellor's Bill will not pass into law, (but as to this we do not despair) yet we have great satisfaction in stating that the cause of judicious and practical reform is nevertheless silently advancing. A series of returns have been moved for by different members of the House of Commons interested in the subject, and these returns have not only been ordered by the House, but have now many of them been made, and they form altogether a valuable body of information, which will greatly assist the carrying on and completing those reforms which have been called for so loudly by the profession, in the various offices connected with the Court of Chancery. We have already brought under our readers' notice, the returns made by the Six Clerks and the Masters, and we have now to call their attention to that made by the Sworn Clerks, and we congratulate Mr. Spence, Mr. Field, and other able and zealous labourers in the good cause, that the more the official facts appear, the more are their statements, and those made by ourselves,* fortified.

Let us first see what is the duty of the Sworn Clerks, or as they are more familiarly called, the Clerks in Court, and as to this we shall chiefly refer to Mr. Field's pamphlet. The records in the Six Clerks' Office, after they are filed, are entrusted by

the Six Clerk to the Clerks in Court, for the purpose of copying and delivering the copies out to the parties. This duty is very analogous to that performed by attorneys at law in the delivery of pleadings to each other. For this the Clerks in Court are paid 10*d.* a folio of 90 words, 4*d.* of which sum they are understood to account for to the Six Clerk,^b and the rest they keep, paying the actual cost of copying, which is about a 1*d.* a folio or less. This fee forms by far the largest source of emolument to the Clerks in Court. They are also supposed to make out the writs of the Court, though in fact they are made out by their agents, who are no more officers of the Court than an attorney's clerk is an officer of a Common Law Court. This part of a Clerk in Court's duty is precisely similar to that performed by attorneys at Common Law. The Clerks in Court also sign consents to petitions, and other matters requiring consents. At Common Law, this is done by attorneys, and without the slightest practical inconvenience. The Clerks in Court also receive all services of notices and warrants, and then send the notices on by porters, or by post, to the respective solicitors. They also keep books in which, for their own and the solicitors' convenience, they enter the names of parties, the dates of filing pleadings, and the names of the other Clerks in Court engaged. The Clerks in Court also tax costs. These are the principal duties of the Clerks in Court: let us next consider its staff. "There are at present, I believe," says Mr. Field, "twenty-eight Clerks in Court, but there are not more than six or seven in any extent of practice. I do not know more than eight

* See the article on Clerks in Court, 19 L. O. p. 1.

^b This turns out to be only 3*d.*

or ten by sight, and certainly, if only one Clerk in Court were required to attend a taxation which, if he were taxing officer would be the case, four could do this part of the work of the office, except perhaps for six weeks before the Long Vacation, and then, if paid by fees, they would, I have no doubt, get through it, as the taxations taken then are not of a hostile nature."

Let us, having considered the duties of the office, next inquire into its emoluments, and here we are happy to be able to supply the authentic information which Mr. Field and others could only guess at.

The return which gives us this, and for which the public are indebted to Mr. Aglionby, the member for Cockermouth, has just been made, and consists of "a return of the number of term fees which were received by, or became payable to each of the Sworn Clerks of the Court of Chancery during the year 1838, and the number of causes in respect of which such term fees accrued; of the amount of the fees which were received by, or became payable to each of such Sworn Clerks during the year 1838, on account of the taxation of costs, and in respect of how many bills of costs such fees became payable, specifying the ten largest amounts received by each of the said Sworn Clerks, for any one bill of costs; of the total amount which was received by, or became payable to each of the Sworn Clerks for office copies during the year 1838 — similar returns during the year 1839."

The return proves that there are but twenty-five Clerks in Court, who divide among them the larger amount of fees paid on this account. But the first observation that arises on looking at the document is, the striking inequality of the amounts received by different members of this body. No names are given (to which we do not object), but each Clerk in Court is represented by a certain number, and what will our readers think when they find that while No. 3, received 10,879*l.* 3*s.* 10*d.* in the year 1839, No. 25 received only 96*l.* 2*s.* 6*d.*, and No. 21 received actually only 20*l.* 2*s.* 6*d.* ! This inequality proves that something is wrong in the constitution of the office. If it be an office of trust and difficulty, it should be properly remunerated, and not be suffered thus to be run to the wall; if it be not an office of trust and difficulty, then it should not be remunerated to the enormous amount of upwards of 10,000*l.* In the one case No. 21 should never receive only 20*l.* a year; in the other, No. 3 is surely too highly paid at 10,000*l.* Now let us see how No. 3

accounts for his 10,879*l.* 3*s.* 10*d.* He paid 1,446*l.* 6*s.* 6*d.*, to the Six Clerks, (who did nothing at all for it, it is to be remembered,) 59*l.* 14*s.* 6*d.* to the Bag Bearer (who did nothing at all for it, it is also to be remembered,) and the residue, being the sum of 9,372*l.* he retains to himself. It is true that the receipts of No. 3, are the largest of the whole, but several others come very near to him. Thus, No. 12 received in 1839, 8130*l.* 8*s.* 6*d.* for fees, 4003*l.* 5*s.* 8*d.* being for office copies. No. 14, in 1839, received 7863*l.* 12*s.* 9*d.* for fees, 3751*l.* 6*s.* 8*d.* being for office copies. No. 16, nearly as much. No. 17, is 9645*l.* 6*s.* 8*d.*, 4634*l.* 18*s.* 4*d.* being for office copies; and several others receive nearly 2000*l.* per annum, while others sink down to as many hundreds, and even as low, as we have already shewn, as 20*l.*

Now, for what are these large sums paid by the suitor? We have no hesitation in saying, for services, which when necessary, could almost all be discharged by the solicitor, as they are at common law by the attorney of the party. The duties of the Clerk in Court, are, as a whole, ministerial; some of them might well be dispensed with altogether, and the suitor relieved from the expense of paying for them; others, we willingly admit, must be done by some one; but they might be done, with the exception of the taxation of costs, by the responsible professional adviser of the suitor. That this expensive office, whether it be called the Six Clerks' Office, or the Sworn Clerks' Office, is necessary for the interests of the suitor, we, at any rate, totally deny. Remodelling and extensive alterations are imperatively demanded; if not, as we are much inclined to think, an entire abolition. The suitor would be directly benefited by the great reduction of the outlay necessary to obtain the object of his suit; the solicitor would receive that remuneration to which he is justly and fairly entitled, and the great ends of justice would, as it appears to us, be materially served.^c

^c Mr. Field, on the number of bills filed, estimated the income of the Sworn Clerks at 54,000*l.* The actual amount shewn by these returns is nearly 60,000*l.* If one man can do a fifth of the work, five can do the whole. By the return of the Six Clerks their income was stated at 6735*l.* By these returns it appears to be 8201*l.* How is this conflict of evidence to be reconciled?

THE GRAMMAR SCHOOLS BILL.

THE Grammar Schools Bill, to which we have already adverted, (see 19 L. O. pp. 360, 465,) has been reprinted as amended by the Select Committee to which it was referred; and, as it now stands, we think it is calculated to do much good.

The objects of the bill are—

First, To enable Courts of Equity, on proceedings instituted according to the usual course, to extend the systems of education in Grammar Schools beyond mere Greek and Latin.

Second, To provide a method by which parties connected with schools may frame new statutes, and submit them for the approval of the Court of Chancery, by a cheap and summary process.

Third, To facilitate the resignation of governors and the filling up of vacancies.

Fourth, To promote the visitation of schools by visitors, and to facilitate the removal of unfit masters.

Fifth, To make miscellaneous provisions.

The second object of the bill is worthy attention, not only as applicable to this bill, but as instituting a summary mode of proceeding with reference to the Court of Chancery; which, if here successful, might be extended with advantage to other matters.

By s. 9 the visitors, patron, and governors of any charity may make statutes for extending the education, and for other purposes connected with the charity, subject to being ratified by the Court of Chancery, but the following mode of obtaining the sanction of the Court may be adopted. By s. 16 the Lord Chancellor shall appoint one of the Masters in rotation, or in such order as he shall see fit, to consider all the new statutes proposed under the act, and all schemes and other matters connected with the same. By s. 17, the Lord Chancellor is also to appoint a fit person to act as "Secretary for Grammar Schools," who shall hold his office during the pleasure of the Lord High Chancellor, and all persons shall communicate with the Master in Chancery through such secretary. By s. 18, the governors of any charity are to transmit their proposed statutes, with report of the circumstances, to the secretary, who is to lay all documents and such other evidence as he may deem advisable, or the Master may direct, before the Master. By s. 20, the Master is empowered and required to accept such documents and papers from the secretary, and to deal therewith in the same manner as with references in

causes from the Court, and shall report to the Court, approving or varying the statutes, or recommending others, or stating the case not to be fit for this summary mode of proceeding. By s. 21, all parties are to have liberty to appear as the master shall direct, but the costs of any party so opposing shall be in the discretion of the Master. By s. 22, the report of the Master is to be filed, and notice of its having been filed shall be sent to the visitor, patron, &c., and copies of such reports may be had on application to the secretary.

This is the summary mode of proceeding intended to be given by the act, and it is worthy the consideration of our readers.

THE PROPERTY LAWYER.

RESIDUARY BEQUEST.

WHERE a will is made in a singular form, the expressions that are used in it must be construed by looking at the whole of the context. *Per Sir L. Shadwell, V. C., in Boys v. Morgan*, 9 Sim. 295; referring to *Legge v. Asgill*, Turn. & Russ. 265; *Crooke v. De Vandes*, 9 Ves. 197; and 11 Ves. 330; and *Attorney General v. Johnstone*, Ambl. by Blunt, 577.

This rule was laid down with reference to the following curious will: "London, No. 11, Gower Street North, 28th June 1835. To my friends and relations who may be curious to enquire, be it known that, a few years back, of my own free will, I gave to Eliza Morgan, commonly called Eliza Castillo, all my furniture, table and bed linen, and apparel, plate, watches and trinkets of any kind then in my possession, a pianoforte, all my library, manuscripts, papers, &c., whatever have been added and may hereafter be added previous to my decease, without any exception whatever, to her sole use and disposal, under promise from her that she will take care that I shall never be in want of any articles as long as I live. Having attained to the 82d. year of my existence, and finding the infirmities of age increasing, I choose to give her this voucher of the truth, that none may question or trouble her to make declaration of it. She knows that thirty years ago I agreed with Dr. Hector Campbell that he should have my carcase for chemical and anatomical experiments, to be by him performed upon it, if he could prevail on her to give it to him: doubting her compliance, I will trouble my head no more about it. The world may think this to be from a spirit of singularity, or whim in me. Be that as it may,

I have always had a mortal aversion to funeral pomp and expense, and therefore trust she will avoid it, and had rather be given away with the sum a funeral would cost, for the purpose of dissection and chemical experiments. I guess there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire Mrs. Eliza Morgan to do, and keep the residue for her own use and pleasure. John Boys."

The point which arose on this case was whether Eliza Morgan was entitled not only to the residue of the testator's money in the banker's hands, but to the residue of the testator's general personal estate; and as to this the *Vice Chancellor* expressed himself as follows:—"The testator takes a contingent view of the sufficiency of the sum in his banker's hands, and says—"To defray and discharge my debts;" and immediately afterwards he adds these words—"which I hereby desire Mrs. Eliza Morgan to do;" and he does not there direct that she shall apply that fund only which is in the banker's hands to the payment of his debts; but gives a positive and absolute direction that she shall pay and discharge his debts. Then follow these words, on which the discussion principally turned: "And keep the residue for her own use and pleasure." Now, it was said that the term *the residue*, plainly, from the context, referred only to that which might remain of the fund in the banker's hands after satisfaction of the debts. But it seems to me, in the first place, that there is nothing which stints the words 'the residue' to the residue of that fund; and, as the testator, in that part of his will in which he directs the expences of his funeral to be paid has plainly referred, although not in express terms, yet by implication, to all his personal property, it is quite obvious that this expression, 'the residue,' may as well apply to the residue of the general personal estate as to the residue of the fund in the banker's hands: and as, in case the debts might happen to exhaust the money in the banker's hands, still they were to be paid, the true construction, in my opinion, is that the residue which E. Castillo is to keep, is the residue of the property liable to pay the debts, which will remain after the payment of them, including, of course, the funeral expences, which by law as well as by plain implication, were to be paid out of the general personal estate. And I think that this construction is aided by the circumstance that, from the beginning to the end of his will, though he does notice friends and relations, yet the sole object of bounty, the sole depositary of confidence and trust, is Eliza Castillo; and therefore, it appears to me that, on the true construction of this will, she is entitled to the residue: and consequently, the demurrer must be allowed." *Boys v. Morgan*, 9 Sim. 290. Affirmed by the Lord Chancellor, see 3 Myl. & Craig. 661.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

TITHE COMMUTATION AMENDMENT ACT.

[Continued from p. 132.]

14. *Extension of powers to substitute fixed rent-charge instead of contingent rent-charge.* 2 & 3 Vict. c. 62, s. 11.—And whereas by the said lastly recited act, powers are given to land owners and tithe owners, and also to the said commissioners, to substitute a fixed rent-charge in certain cases instead of a contingent rent-charge, where lands are partially exempted from the payment of tithes or rent-charge by reason of having been parcel of the possessions of a privileged order, and it is desirable to extend such powers in manner hereinafter mentioned:—be it enacted, that such powers shall extend to all cases where, by reason of lands being partially exempted from the payment of tithes, by custom or otherwise, or by being subject to a shifting or leaping modus, or other customary payment, or rendered due only on certain contingencies, a contingent rent-charge has been already fixed, or would, according to the provisions of the said firstly recited act, be fixed in respect of such lands; and it shall be lawful for the said commissioners, with such consent of both land owners and tithe owners as in the said lastly recited act is required in that respect, at any time before the confirmation of the apportionment of any rent-charge, by any award, or by a supplemental award, where an award or parochial agreement has been made before the passing of this act, or for the land owners or tithe owners, by a parochial agreement or supplemental agreement where a parochial agreement or award has already been made in respect of such lands, to exercise such powers, in such manner and subject to the same conditions as are given by the said lastly recited act in cases of lands formerly part of the possessions of a privileged order: Provided always, and it is hereby declared, that nothing herein contained extends to cases of change of cultivation only, nor to cases of prescription relating to woodland.

15. *Extension of powers in respect of lammas and common lands.* 2 & 3 Vict. c. 62, s. 13.—And whereas by the said lastly recited act certain provisions are made and powers given in respect of the tithes of lammas and common lands, which powers are to be exercised by the land owners and tithe owners by parochial agreement, or by a supplemental agreement after a parochial agreement, and by the commissioners by compulsory award, or by a supplemental award after an award; be it enacted, that such provisions may be carried into effect, and such powers exercised at any time before the confirmation of the apportionment of any rent-charge, by the land owners and tithe owners by a supplemental agreement after an award, or by the commissioners by supplemental award after a parochial agreement.

16. *Commissioners to give notice to proceed.*

by supplemental award.—And be it enacted, that in every case where it shall be the intention of the commissioners to proceed in any parish under this act by supplemental award after a parochial agreement, either to fix the period of the commencement of such rent-charge or to carry into effect the provisions and powers of the said lastly-recited act in respect of the tithes of lammas and common lands, they shall cause the like notice of their intention to be given in such parish as is required by the said first recited act in the case of an award; and if at any time after giving such notice, and before the expiration thereof, any proceedings shall be had under the said recited acts, or either of them, or this act, by the land owners and tithe owners in such parish, towards making and executing any parochial agreement or supplemental agreement in respect of the matters specified in such notice, the commissioners shall refrain from acting on the same until the result of such proceeding shall appear.

17. *Extension of powers of conveyance of lands to trustees and feoffees for parochial purposes.* 2 & 3 Vict. c. 62, s. 21.—And be it declared and enacted, that so much of the said lastly recited act as relates to the vesting of an estate of inheritance as to any lands in any ecclesiastical tithe owner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance, extends to churchwardens and overseers, or to trustees or feoffees of parish property, or of property held by or vested in such trustees or feoffees for parochial or other uses or purposes in the nature of a parochial or public trust.

18. *Power for parties to parochial agreement, and for commissioners, to declare the amount of extraordinary charge to be payable in respect of hop grounds, &c. No extraordinary charge payable on hop grounds, &c. for the first year of their being cultivated as such, &c.*—And be it enacted, that in any case where the parties to a parochial agreement, or the commissioners in the case of an award, shall have proceeded according to the provisions of the said recited acts, to ascertain and fix a rent-charge in any parish wherein any of the lands shall at the time of making such agreement or award be cultivated as hop grounds or market gardens, and in case of proceeding by award when notice shall have been given that the tithes of any of the lands so cultivated should be separately valued, it shall be lawful for the said parties to declare in such agreement, or for the said commissioners to declare in such award, the amount of extraordinary charge per acre to be in future payable in respect of hop grounds and market gardens respectively in such parish or any district therein; and the rent-charge mentioned in every such agreement or award respectively shall, subject to the addition of such acreable extraordinary charge, consist of the amount agreed for or awarded in respect of the tithes in such parish,

other than the tithes of the lands cultivated therein as hop grounds and market gardens respectively, and the ordinary charge in respect of the lands so cultivated as hop grounds and market gardens respectively added thereto: provided always, that no such extraordinary charge shall be payable in respect of any such hop grounds and market gardens during the first year, and only half such extraordinary charge during the second year, in which they shall be newly cultivated as such, whether such new cultivation shall have commenced before or after the making of such parochial agreement or award as aforesaid.

19. *Extraordinary rent-charge need not be distinguished on separate lands in apportionment*—And be it enacted, that it shall not be necessary to distinguish in any apportionment the amount of extraordinary rent-charge to be charged upon the lands of each individual land owner which shall be cultivated as hop grounds, market gardens, orchards, fruit plantations, or mixed plantations of hops and fruit, provided that the acreable amount of extraordinary charge for all the lands so cultivated respectively in any district which shall have been assigned, or in any parish wherein any extraordinary rent-charge shall have been declared, previous to the confirmation of the instrument of apportionment, shall be inserted therein.

20. *Half yearly payments of rent charge to be regulated by averages declared under 6 & 7 W. 4, c. 71, s. 67.*—And be it declared and enacted, that every half-yearly payment of rent-charge under the said recited acts, or either of them, or this act, shall from time to time be regulated by the averages published under the provisions of the said first-recited act in the month of January next preceding every such half-yearly day of payment.

21. *Instrument of apportionment to distinguish the amount of rent-charge payable in respect of each close. Act not to extend to cases in which valuers are already appointed.*—And be it enacted, that, unless a majority in value of the owners of lands included in any apportionment shall, by writing under their hands, request the commissioners to omit the same, the instrument of apportionment shall distinguish the amount or portion of rent-charge payable in respect of the several closes of the said lands, and such closes shall be laid down in the map or plan annexed to such apportionment: Provided always, that nothing in this provision contained shall apply to any instrument of apportionment the valuers for effecting which shall have been appointed previous to the passing of this act; and no such last-mentioned instrument of apportionment shall be deemed invalid if made in conformity with the instructions given to the valuers for making the same, although the amount of rent-charge payable in respect of the several closes of land shall not have been distinguished therein, nor such closes laid down in the map or plan annexed thereto.

22. *For recovery of expences in certain cases.*—And be it enacted, that every occupier whose lands or goods shall be liable to distress in

respect of any expences chargeable under the said recited acts, or either of them, or this act, against any landlord or lessor of the lands in his occupation, shall be entitled to recover the amount of any such expences which he shall pay, with interest on such payment from time to time at four per centum per annum, and may deduct the same from any rent or renewal fines payable to such landlord or lessor; and where the estate of such landlord or lessor in the lands in respect whereof such payment shall have been made shall be less than an immediate estate of fee simple or fee tail, or subject by settlement to any uses or trusts, he shall be entitled to charge such amount and interest upon such estate in like manner and subject to the same restrictions and provisions as are contained in the said recited acts or any of them in relation to owners of particular estates, or of estates settled to the same uses and trusts as the lands in respect of which such expences have been incurred respectively.

23. *Power to charge expences of commutation, in certain cases, on renewal fines, &c.*—And be it enacted, that every person, as defined in the said first-recited act, who is empowered under the said recited acts or any of them, or this act, to charge upon his lands or rent-charge any expences of commutation payable by him, may exercise such powers, in the case of expences incurred, as well in respect of the commutation of tithes payable to him as the owner thereof as of tithes to which any lands whereof he is owner are liable; and the word "Lands" shall, in the construction of the said acts and of this act, be construed to extend to and include any income or sum receivable by or accruing to such person from redeemed land tax, or from fines or other sums of money payable on the renewal of any term or estate in lands, tithes, or rent-charge holden of or by him to the same uses and upon the same trusts as the lands, tithes, or rent-charge in respect of which such expences of commutation are incurred.

24. *Provision for discovery of books and documents relating to commutation.*—6 & 7 W. 4, c. 71, s. 10.—And be it enacted, that notwithstanding any thing in either of the said acts contained, in all cases where under the said recited acts or any of them the said commissioners or any assistant commissioner may examine persons upon oath, and cause to be produced before them or him all books and other documents as therein mentioned, relating to the commutation of tithes, the said commissioners or assistant commissioner may, by summons under their or his hand, require the attendance of and examine any party interested in the lands or tithes of any parish, or any other person, and require the production also of all deeds and documents in the custody or power of either party, and allow such portions only of them to be read as in their or his judgment shall be thought proper; and also that in all cases where under the said acts parties in a feigned issue are required to produce to each other, and their respective attorneys or counsel, at such time and place as any

judge may order before trial, and also to the court and jury upon the trial of such issue, all deeds, books, and other documents, as in the said act mentioned, relating to the matters in issue in their respective custody or power, the parties shall be obliged to produce only such documents, and such portions of them only shall be inspected or read, as the judge shall think proper, who may order the parties to discover the documents in their possession, upon oath, if he shall think fit; and it shall be lawful for the judge, and also for the commissioners or assistant commissioner, in the cases aforesaid respectively, to direct copies or extracts to be taken or furnished of the same documents, at the expence of the person requiring the same, at the rate of sixpence for every common law folio: Provided always, that in no case shall any person be compellable to produce any part of the deeds or documents in his possession which relate to the title to the property therein referred to, but only such parts thereof as relate to the matter immediately in issue; and such person may, if he see fit, withhold any such deeds or documents, or any portion thereof, on making an oath that the deeds or documents or parts thereof so withheld do not relate to the matters so in issue as aforesaid.

[To be continued.]

THE LAW RELATING TO MUTUAL CREDIT.

THE principle which the bankrupt laws appear to have had in view, from the earliest time to the last provisions made therein, is this, that where two persons have dealt with each other on mutual credit, and one of them becomes bankrupt, the account shall be settled between the parties, and the balance only payable on either side. That this was the practice of the commissioners of bankrupt long before any statutory provision on the subject, appears clear from the two earliest decided cases. *Anonymous*, 1 Mod. 215, before Lord Chief Justice North; and *Chapman v. Derby*, 2 Vern. 117. The first statute which made any provision on the subject was the expired statute of 4 & 5 A. c. 17. By that statute it was enacted in the 11th section, that where there hath been mutual credit given between the bankrupt and any debtor, and the accounts are open and unbalanced, it shall be lawful for the commissioners or assignees to adjust the accounts, and the debtor shall not be compelled to pay more than shall appear to be due on such balance. This provision of the expired statute of Anne is re-enacted in the twenty-eight section of the 5th Geo. 2, c. 30, with some variation in the expression, that section enacting, that "the commissioners or assignees shall state the account between them, and one debt may be set against another, and what shall happen to be

due on either side on the balance of such account, and on setting such debts against one another, and no more, shall be claimed or paid on either side respectively." This statute continued in force until the 46 G. 3, c. 135, s. 3; which provides that where there hath been mutual credit given, or mutual debts between the bankrupt and any other person "one debt or demand may be set against the other, notwithstanding any secret act of bankruptcy before committed."

"The same language is continued in the last statute 6 G. 4, c. 16. So that from the earliest practice to the latest provision by statute, the object seems to have been that the account should be stated as between merchant and merchant, and that whatever would be in ordinary practice a pecuniary item in such account should be the subject of set-off. And we think the demand of the bankrupt against the defendant under the circumstances stated upon this record, falls clearly within this description."

This history of the law of mutual credit is extracted from the judgment of the Court of C. P., delivered by *Tindal, C. J.*, in the case of *Gibson v. Bell*, 1 Bing. N. C. 743. It is to be observed that in the 5 G. 2, c. 30, the expression is "one debt may be set against another," whereas in the subsequent statutes the expression is "one debt or demand may be set against another,"—the words "or demand" being introduced. With regard to which, *Tindal, C. J.*, says, in *Gibson v. Bell*,—"It is difficult to see for what purpose such latter words can have been introduced, and have been since continued in the 50th section of the last bankrupt act, except for the purpose of giving a greater latitude than the strict meaning of the word *debt* would of itself import."

It is proposed now to discuss the principal cases in which the meaning and application of the words "debt or demand" has been at issue.

The case of *Rose v. Hart*, 8 Taunt. 499, may be considered the fundamental case, as the meaning given to those words there, has been adhered to in all the subsequent cases.

It appears from that case that the *demand* must be such that it will end in a debt. The Lord Chief Justice *Gibbs* lays down, that by *credit* the legislature meant "such credits only, as must in their nature terminate in debts."

Thus in *Rose v. Sims*, 1 B. & Ad. 521, the circumstances were these: *A.* having given defendant his acceptance for 20*l.*, defendant in consideration thereof, undertook that he would indorse to *A.* a bill drawn by him (defendant) on *E.*, payable to defendant's order,—defendant gave the bill, but would not indorse it. On assumpsit brought by the assignees of *A.*, who had become bankrupt, and whose acceptance was dishonoured: Held, that the contract to indorse was not a subject of mutual credit within 6 Geo. 4, c. 16, s. 50, and could not have been set-off by the assignees against the 20*l.* due from *A.* to the defendant. In confirmation of *Rose v. Hart*, it

was also laid down that the clause of mutual credit applies only to debts or transactions which must end in a debt.

The principle on which the decision was founded appears from the language of *Taunton, J.* "The damages were unliquidated, and their amount depended on circumstances. How could the commissioners in such a case have stated an account between the parties, as directed by the act?"

But in *Gibson v. Bell*, 1 Bing. N. C. 743, it was held that a defendant might set-off a debt due to him from a bankrupt, for money lent &c., against a claim by the bankrupt's assignees on defendant for not accepting pursuant to agreement a bill of exchange, by way of part payment for goods sold and delivered by the bankrupt to defendant.

It was contended that this was an action for unliquidated damages, and did not admit of a plea of set-off; and *Rose v. Sims* was relied on. In the judgment *Tindal, C. J.*, says,— "Looking to the form of the first count of the declaration, it is a claim for unliquidated damages against the defendant for not accepting a bill of exchange according to a special agreement between the bankrupt and the defendant. But that agreement appears on the face of the first count to have been in substance a contract to accept a bill in payment of the remainder of the price of goods sold and delivered by the bankrupt to defendant, and the bill of exchange is expressly alleged in that count to have been drawn "for the balance then due and owing from the defendant to the said bankrupt, upon the account aforesaid." In substance, therefore, the bill, if accepted, would have been a security for the payment at a future day, of a settled and ascertained balance, due upon an account, in which the price of goods sold to the defendant made one side, and partial payment made by the defendant the other side. It is to be observed further that the plaintiffs, although they have brought a special action of assumpsit, have stated no special damage in their declaration; so that the measure of damage to which the jury would be confined in their verdict is necessarily a mere matter of calculation."

And afterwards his lordship says,— "If the demand had not been enforced until after the time for which the bill was to run, the demand became actually a debt, for which the bankrupt might have brought his action for goods sold or an account stated,—if enforced, before the demand had expired, his demand was one which must become a debt in a short time, and of which the present value was determinable by deducting the discount for the time the bill had still to run. And as to the case of *Rose v. Sims*, we think the present may well be distinguished from it. In that case a special action was brought, for not indorsing a bill of exchange according to an agreement,—if the indorsement had been made, it would not in its nature necessarily have terminated in a debt from the defendants, for the acceptor would have been the debtor, the indorser a guarantee only."

A guarantee cannot be the subject of a set-off in any case—it was so held in *Morley v. Inglis*, 4 Bing. N. C. 58.

The decision in *Gibson v. Bell* was confirmed by the case of *Groom v. West*, 8 A. & E. 75, the circumstances of which were similar to those of *Gibson v. Bell*, except that in the former special damage was alleged; viz. a damage arising to the bankrupt's estate in consequence of the defendant's refusal to accept the bill. On this point *Patteson, J.*, remarks: "The question comes to this point, whether the allegation of what is here called special damage makes any difference." I think it makes none. The inconvenience suffered by the bankrupt is not to the purpose in this action. The only damage to the assignees is a *damage to the estate*, that the personal estate and effects of the bankrupt applicable to the discharge of his just debts was by reason of the non-acceptance and nonpayment much diminished in value. I do not see how the bankrupt's estates in the hands of the assignees could sustain any special injury by the non-acceptance and non-payment, otherwise than that the defendant by reason of them is now enabled to plead a set off. But the declaration cannot mean that: it means that the estate suffered injury at the time of the breach; and if any such injury could have accrued, it is not sufficiently alleged. The declaration should have shewn how it accrued, and we might then have seen whether it took the case out of the general rule of mutual credits. Here is nothing in substance but the ordinary allegation of damage by nonpayment for goods: the case therefore is that of a common money transaction."

It is necessary to notice one or two cases in which, although the transactions between the parties end in a debt, the rule as to mutual credit in case of bankruptcy does not apply. The case of *Clarke v. Fell*, 4 B. & Ad. 404, affords an instance. A tradesman undertook to do work upon an article delivered to him for a person to whom he was indebted, and it was agreed that the work should be paid for in *ready money*. He afterwards became bankrupt, and it was held that the 6 Geo. 4, c. 16, s. 50, did not in this case render the assignees liable in trover for refusing to deliver such article to the creditor on his offering to set off the price of the work against his own demand.

It was contended, on the motion for a new trial for the plaintiff, that the case came within the decision in *Rose v. Sims*, 1 B. & Ad. 521, but the Court held otherwise. The principle of their decision is clearly expressed by *Patteson, J.* "I admit that the law of mutual credit under the Bankrupt Act goes farther than the ordinary law of set-off. *Rose v. Hart, Buchanan v. Findlay* (9 B. & C. 738), *Rose v. Sims*, shew this; and I agree with Mr. Cleasby, that there is a mutual credit within the act where the debt, or that which will terminate in a debt, exists on both sides: but the question in this case is *whether the bankruptcy of one party does away with an express contract establishing a lien for payment of a particular debt. I find no case which decides that it can.*"

This case shews clearly the nature of the kind of contracts which will exclude mutual credit; but in order to bring any case within the exception, the goods must not be parted with. This is laid down by Lord *Tenterden* in the case of *Buchanan v. Findlay*, 1 B. & C. 738. His Lordship says: "We think the cases cited on behalf of the defendant distinguishable from the present. In some of them a set-off was allowed against the price of the goods sold, notwithstanding a promise at the time of the sale to *pay ready money to the bankrupt for them*. In those cases the bankrupt should have insisted on receiving the money *before he parted with the goods: by parting with them he immediately raised a case of mutual credit and cross demands.*" In other words, the lien must be preserved or the law of mutual credit is let in.

REMOVAL OF THE COURTS.

On Monday last a deputation, consisting of the Chairman, Deputy Chairman, and Secretary of the Incorporated Law Society, attended the Lord Chancellor with the petition to the House of Lords, for the removal of the Courts. They also attended the Attorney General with the petition to the House of Commons. The Petitions have since been presented to both Houses.

The following are the statements contained in the petition:—

That the present building, comprising the Courts of Law and Equity in Palace Yard, is insufficient and ill adapted for its purpose.

That Sir John Soane, the architect who erected it, stated its inadequacy in strong terms in a petition to the House of Commons in May 1824.

That the building constructed on the site, then admitted to be too circumscribed, provided for seven Courts only, whereas it is obvious that several additional courts will be required.

That to meet the demand for space for the assistant courts for the Master of the Rolls, and otherwise, small interior spaces, without sufficient light or air, and approached by narrow passages, have been resorted to.

That the site of the present Courts at Westminster does not afford sufficient space for those Courts; still less does it admit of the erection of the required new courts, or of the further conveniences pointed out in the petition of Sir John Soane as being fitting, and which are now imperatively called for.

That the necessity of the Courts of Equity being held in the neighbouring of Lincoln's Inn is admitted by the fact that those Courts are constantly adjourned to and held for the larger portion of their sittings in that neighbourhood, in halls which they occupy by suffer-

ance only, and which are dispersed and inconveniently situated.

That if the existing site be adhered to, new and duplicate Courts of Chancery must be erected both in Lincoln's Inn and in Palace Yard.

That a reconstruction of all the Courts is become absolutely necessary, and the question remains on what site they shall be placed.

That the Courts in Palace Yard are far removed from all the places set apart for the study and practice of the law.

That the advantages of concentrating the general business of the profession in one district is admitted by the fact that the new Chambers for the Judges have recently been erected in the neighbourhood of Lincoln's Inn, where are also situated the offices of the Masters in Chancery and of the Accountant General, and the Register's and the other public offices of the same Court, and that several offices of the Common Law Courts have also been recently built there, and others are in contemplation.

That in the same district are all the Inns of Court and Chambers of the Barristers, and the offices of a very large proportion of the attornies and solicitors.

That the attendance at Westminster causes great waste of time to the junior barristers in all the Courts, and is productive of a very considerable portion of that delay so much and so justly complained of in the Court of Chancery in particular.

That no sufficient reason for continuing to hold the Courts in Palace Yard remains, while Lincoln's Inn Fields presents a site convenient for the public, whether as suitors, jurors, or witnesses, as also for the profession; and it affords ample space for an edifice, which will form a great ornament to the metropolis, without the removal of any buildings or injury to any individual.

That any necessity for the Courts of Law being contiguous to the Houses of Parliament, does not, in truth, exist; the labours of the judges being in nowise connected with Parliament, except on very rare occasions when their lordships are called on to advise in the House of Lords; and that the very large increase which has taken place in the private business of both Houses of Parliament has already provided, and must continue to support, a distinct bar for parliamentary business.

That Westminster Hall, when relieved from the witnesses and others in attendance on the Courts, will form a fitting vestibule to the Houses of Parliament now in the course of erection, and that the present Court Rooms may be converted to many useful purposes.

That rooms are wanted for the deposit of records, which may be amply provided for in the proposed new edifice in Lincoln's Inn Fields.

That the unappropriated suitors' fund of the Court of Chancery, amounting to two and a half millions, and the surplus fee funds of the other Courts, furnish ample means to meet all the requisite expenses, and may be

made available, as they have been on several occasions, without risk to the suitor or loss to the public.

OBSERVATIONS IN FAVOR OF THE BILL AS TO SEDUCTION.

Sir,

THE letter inserted in your number of 23d May, on the proposed act for providing the poor with a remedy in cases of seduction, contained many forcible arguments. But its chief value consisted in the attention it was calculated to draw to this important subject.

Sir, I must be permitted to observe, it is a severe reproach to this country, that the wrong inflicted by the seducer is in all cases theoretically, and in many practically, without a remedy.

The poor laws formerly provided justice for the injured female, by reimbursing all the charges entailed by her misfortune, and allowing a sufficient maintenance for the offspring. The present poor law deprived her of this remedy without substituting any other, and I regret to say, the crime produced by this state of things is loudly calling for some reformation. I fear the profligacy of men, the murder of infants by their mothers, and the consequent execution of those unhappy creatures, have lately much increased. The old law may have been objectionable, but there ought to be, and there must be, some punishment for the injurer, and some compensation for the injured; and it seems to me, that these are to be secured by moderate damages attainable in an inexpensive manner. These damages ought not perhaps to exceed ten pounds. At all events I think thirty pounds too high. The details and machinery are open to discussion, and the objection of your correspondent to the present bill require deep attention. But to suppose an attorney would sue a footman or labourer for seducing an housemaid or other servant seems unreasonable.

These remarks apply to the case of those only who are poor, and unable to seek a remedy in the superior courts. Adherence to legal actions causes a failure of justice in many most culpable cases amongst those who are in circumstances to sue and be sued in the ordinary form. Suppose a young woman is a servant, a governess, or an apprentice, and is seduced by her employer or any of his family, there is no mode by which compensation can be awarded to the sufferer. This has been decided in *Dean v. Pell*, 5 East, 45, and in several modern cases.

I respectfully offer these remarks to your readers, at the same time expressing my full conviction, that every new measure should undergo a calm and searching examination before it is allowed to become a part of the law of the land.

S.

[Continued from p. 137, ante.]

*Clerk's Name and Residence.**To whom articulated and assigned.*

- Mac Gregor, Joseph Alexander James, 2, Fig Tree Court, Temple; 8, Adam Street; and 1, Featherstone Buildings.
- Molyneux, Joseph, 169, Fenchurch Street; and Brighton.
- Molesworth, John, 27, Queen Street, Brompton; and 4, Hyde Park Place.
- Mansell, Thomas, 50, Pratt Street; and Knighton.
- Marston, James Vann, 41, Argyle Street, New Road; and 14, Harrison Street.
- Masterman Henry, Leyton.
- Merewether, Herbert Walton, 7, Whitehall Place.
- Markland, Bertie, 59, Fleet Street; and Leeds.
- Norton, William Hebelor, 1, New Steet, Bishopsgate Street.
- Nicholls, Charles Kerry, formerly Whitaker C. Kerry, 10, Buckingham Street.
- Nicholson, James, 2, Grenville Street; Thelwall; and 39, Keppel Street.
- Pallet, James, 3, Wilmington Square; and Edghaston.
- Potts, Frederick, 18, Henrietta Street, Brunswick Square; and Chester.
- Pardoe, Frederick, 5, Warwick Court; Ludlow; and Hopton Castle.
- Potter, Samuel, the younger, 35, King Street, Cheapside.
- Picksley, Edwin John, 79, Upper Stamford Street; and Sheffield.
- Pilleau, William, 12, Upper Kennington Place.
- Perkins, Thomas, 12, Clerkenwell Green; and Warwick.
- Palmer, Charles, 57, Westmorland Place, City Road; Coleshill.
- Roscoe, James Griffies, 2, Wilmington Street.
- Reed, Thomas Lancelot, 37, Upper Stamford Street; Ixworth; 44, Southampton Buildings; and 5, Norfolk Street.
- Radcliff, Coplestone Lopes, 50, Mortimer Street; Warleigh; and 3, Newman's Row.
- Rylance, James, Wigan.
- Rodgers, Charles, New Sleaford.
- Rumsey, Robert Crook, 8, Devonshire Street; Abergavenny; 47, Baker Street; 6, Wellington Street; and 3, Warwick Place.
- Robinson, James, 12, Carter Street, Walworth; and 8, Frederick Place, Vauxhall.
- Ready, Charles, 7, Caroline Place; and Lewes.
- Rickards, Robert, 19, Grafton Street; Wiveliscombe; and 21, Gower Place.
- Rycroft, Dawson, Bradford.
- Roxby, Joseph, 6, King's Terrace, Lower Road, Pentonville; South Shields; 27, Arundel Street; and 5, Ampton Street.
- Shelton, George Lane, 14, Ampton Street; Bromyard; and 16, Huntley Street.
- Smith, Richard, York.
- Sheppard, Richard, Wells.
- Smith, John, York.
- Frederick Moule, Melksham; assigned to Ralph Thomas, 8, Crane Court; assigned to Arthur William Tooke, Bedford Row.
- George Philcox Hill, Brighton.
- George Curteis, Canterbury; assigned to Francis B. Robinson, Essex Street.
- William Roberts, Oswestry; assigned to Richard Green, Knighton.
- John Edward Lawton, Leicester; assigned to W. Grimwood Taylor, John Street.
- Thomas Kearsy, Bucklersbury.
- Thomas Adlington, Bedford Row.
- Robert Barr, Leeds.
- William James Norton, New Street.
- Henry Rodolph Wigley, Picket Street.
- Peter Nicholson, Warrington
- John Wilkes Unett, and J. Unett, Birmingham.
- Joshua Lacey, the younger, Liverpool; assigned to Charles Potts, Chester.
- John Lloyd, Ludlow.
- William Crowe, King Street; assigned to Samuel Potter the elder, King Street.
- Thomas William Rodgers, Sheffield.
- Beriah Drew, Bermondsey Street; George Drew, Bermondsey Street.
- John Lampray, Warwick.
- Edward Fielding Palmer, Coleshill.
- Edgar Taylor, Bedford Row.
- Sturley Nunn, Ixworth; assigned to Henry Manisty, King's Road.
- Edward Jago, Plymouth; Thomas Adlington, Bedford Row.
- John Croudson, Wigan.
- William Foster, New Sleaford.
- Tom Gabb, Abergavenny.
- William Frederick Cooper, Ironmonger Lane.
- John Lewis, Lewes.
- Charles Meredith, Lincoln's Inn; assigned to Frederick Napier, Bower, Wiveliscombe.
- George Robert Mossman, Bradford.
- John Tinley, Northshields.
- William Deveroux, Bromyard.
- Henry Newton, York.
- William Truman Harford Phelps, Wells; assigned to William Inman Welsh, Wells.
- Jonathan Gray, York; assigned to David Russell, the younger, York.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

SALARY OF AUDITORS.

A testator directed his trustees to submit the accounts of the trust property annually to be audited by a barrister of judgment and experience, and to pay him such annual remuneration as was usual for auditors to receive. The Court refused to alter the allowance named by the master, upon consideration of the duties and responsibility of the office, although the trouble was slight, and the sum allowed far exceeded what the auditor was paid for several years.

Sir Corbet Corbet, by his will dated 1823, devised his real estates to trustees in trust to let the same, and out of the rents to pay the interest of incumbrances, and the salaries of receivers, stewards, auditors, &c., employed in the execution of the trust, and to accumulate the surplus to pay the incumbrances &c.; and subject thereto he devised said estates to Richard Corbet and his sons in strict settlement. And, by a codicil to the will, he appointed Mr. William Williams, a barrister, to be auditor of the accounts, with such annual remuneration as was usual for auditors to receive, and if Mr. Williams should refuse, or become incapable of auditing the accounts, he directed the trustees to appoint another barrister, of known judgment and experience, to be auditor. Mr. Williams accordingly audited the accounts after the testator's death and up to 1836, at fifty guineas a-year. In 1836, in consequence of some misunderstanding between him and the trustees, they gave him notice that they would appoint another auditor in his place, whereupon Mr. Williams filed his bill in this Court against them, insisting that they had no right to remove him, as he had, under the will, a beneficial interest in the office during his honest performance of the duties of the office, and praying an injunction. The *Vice Chancellor* decided accordingly in his favour, holding that he was as much entitled to the emoluments of auditor as the devisees were to the estates under the will, and it was referred to the Master to fix the amount.* Mr. Williams attended before the Master with his witnesses, and claimed 350*l.* a-year thenceforward, alleging that the income of the property was above 14,000*l.* a-year, and the incumbrances very considerable, and the duties became onerous; some of his witnesses would fix the annual remuneration at 500*l.*, while others of them

considered 400*l.* a-year sufficient. The trustees, on the contrary, insisted before the Master, that all the accounts for the year might be audited in one day, and that for ten years and more Mr. Williams was content with fifty guineas a-year. The Master fixed the remuneration at two hundred guineas a-year, and reported accordingly. The trustees and other defendants filed exceptions to the report.

Mr. Knight Bruce and Mr. Anderdon, for Mr. Williams.

Mr. Wigram, and Mr. Teed, for some of the trustees, urged that the allowance named in the report was excessive. The accounts might be audited in one day, and a sum of ten or twenty guineas would be quite sufficient for the trouble. There was no responsibility. Although the estates were considerable, the first devisee for life had not more than 500*l.* out of them. It would be unreasonable to give the auditor nearly half that sum.

Mr. Richards said he appeared for others of the defendants.

The *Ld. Chancellor* said he should not disturb the Master's finding. Whether the testator had acted wisely in directing the appointment of an auditor was a question with which the Court had nothing to do. It was declared by a decree in the cause that the will created a trust in favour of Mr. Williams, and it was the duty of the Court now to give effect to that decree, and also the intentions of the testator thereby declared. By the will, the office of auditor, if Mr. Williams refused or was incapable of discharging the duties, was to be given to another barrister of judgment, integrity, and experience. The defendants did not seem to estimate properly the services of a gentleman of that description, nor the time which the proper discharge of his duties would require. The Master, by his report, has fixed the allowance considerably lower than any of Mr. Williams' witnesses would have it. It did not appear to his Lordship that the Master at all miscarried in fixing the sum at two hundred guineas, and his report therefore should be confirmed. He could not pass over the circumstance of the trustees and other defendants, all in the same interest as against the plaintiff, appearing by different counsel, instructed by different solicitors, to the unnecessary waste of the time of the Court and of the trust estate, and he would not allow out of the estate more costs than of one set of defendants.

Williams v. Corbet.—At Westminster, June 10th, 1840.

TRIALS OF ISSUES.

When an issue is directed by the Court to be tried at any certain assizes, or within a time named, it shall be taken pro confesso against the party who refuses to go to trial according to the direction.

An application was made for extending the time for trying an issue, directed by the Court, to the next Spring Assizes, on the ground that one of the parties could not be prepared for trial at the next Summer Assizes.

* See report, 8 Simons, 349, and 13 Leg. Obs. 408. The analogous case of *Lawless v. Shaw*, there referred to, has been since decided in the House of Lords, declaring that an agent, whom a testator desired his trustees to retain, had no beneficial interest under the will, 5 Clark & F. 129.

The *Lord Chancellor*, after hearing counsel shortly on both sides, observed that this issue was directed some time ago, and the order directing it was affirmed by this court in 1839, yet now, towards the middle of 1840, one of the parties asked for an extension of the time for trial till the Spring Assizes of 1841. There were yet three months until the next Summer Assizes, sufficient time for preparation for trial; and unless the party goes to trial then, the issue must be taken *pro confesso* against him; and for the future, whenever an issue is directed to be tried at any assizes, it must be taken *pro confesso* against the party who refuses to go to trial then.

Attorney General v. Cleave, at Westminster, May 29, 1840.

Rolls Court.

PARTNERSHIP.—RECEIVER.

The representative of a deceased partner is entitled to call for an immediate sale and division of the partnership property, where there are no stipulations to the contrary.—Surviving partners have no exclusive right to good will.

This suit had been instituted by the personal representative of a deceased partner against the surviving partners, for a sale and distribution of the partnership property, and for the usual accounts.

The partnership had subsisted without any written articles, and since the death of the deceased partner, who died in 1839, the business had been carried on by the survivors. The plaintiff stated that the defendants were using the partnership property for the purpose of carrying on the trade; that she believed them to be in insolvent circumstances, and that they refused to render any account. A motion was now made for the appointment of a receiver, and that the defendants might be directed to deliver up the premises, stock in trade and other effects belonging to the co-partnership, together with all books and accounts relating thereto, to the person who might be appointed such receiver.

Pemberton and *Stevens* for the plaintiff, insisted on the general right of a partner to call for an account of the partnership property, and insisted upon the necessity for the Court's interposition, to prevent the partnership property from being improperly disposed of.

Kindersley and *Sidebotham*, for the defendants, opposed the motion as an unnecessary interference with the defendants in the management of property, in which by the death of the deceased partner they had now become the parties most interested. They did not object to a receiver with limited powers—a receiver who might be directed to get in the outstanding debts due to the co-partnership, and to satisfy the claims upon it; but if an order were made according to the terms of the notice of motion, the necessary consequence must be a complete destruction of the trade, for the property being an ironwork, if the bu-

siness were stopped, even for a short period, it could not be revived with any advantage. The same result might also be anticipated from the appointment of a manager, who, having no interest in the concern, could scarcely be expected to pay the attention necessary for carrying it on with success, and whose salary would form a considerable item of deduction from the profits. They denied the insolvency of the defendants, and contended that in all articles of partnership it was usual to insert a clause authorizing the surviving partners to take to the stock within a certain time after the death of any one partner, and that equity should supply so reasonable a condition where no written agreement existed. They also cited *Hammond v. Douglas*, 5 Ves. 539; and *Lewis v. Langdon*, 7 Sim. 421; to shew that the good will of a business belonged to the surviving partners.

Pemberton, in reply, denied that the position contended for respecting the right to good will had been established by the cases referred to. The surviving partners had no right to continue the business for their own benefit, and all the plaintiff desired was, that an immediate sale should take place, and the interest of her testator be ascertained.

Master of the Rolls.—The surviving partners cannot have any peculiar benefit from a continuance of the trade. The distinction with regard to good will is, that if it be attached to the premises, it belongs to the partnership; and if such be the nature of it here, the plaintiff, as the personal representative of the deceased partner, is entitled to a share of the value of it; if it be attached to the person, then the surviving partners can take it away with them. The plaintiff at the hearing would be entitled to an immediate sale, although a reference might be ordered to the Master to determine as to the best mode of effecting such sale, and of managing the property in the mean time; and unless the parties can come to some arrangement, I shall deem it necessary to appoint a receiver with certain powers, and also order an injunction to restrain further interference on the part of the defendants.

Motion ordered to stand over.—*Burns v. Douglas*, 24th June, 1840.

PRACTICE.

Quære whether answer can be excepted to for insufficiency after motion to produce books and papers.

On the 29th of May an order had been obtained by the plaintiff for the production of the books, papers, and documents referred to in the defendant's answer, and admitted by him to be in his possession, and on the same day an order was also obtained by him for referring the answer for insufficiency.

Pemberton now moved that the last mentioned order should be discharged, on the ground that obtaining an order for production is a waiver of all objections to the answer in point of form.

Louder, contra.—No authority is to be found in the books for the position contended for on the part of the defendant; and in *Davis v. Franklin*, recently heard before the Lord Chancellor, an injunction had been obtained to stay proceedings at law, and yet an order of reference for insufficiency of answer was afterwards granted. A motion for payment of money into Court has been held to be a waiver; but there the distinction arises as to orders relating to the relief and those confined to discovery, and it is doubtful whether even such a motion would be now held to be a waiver. The motion also should have been that the exceptions for insufficiency should be taken off the file.

Pemberton.—The Master must obey an order of the Court, and therefore the order for referring the matter to him must be got rid of. It is remarkable that the point has never been directly determined, but the practice is so constant and universal is scarcely to leave a doubt about the rule, for notice of production is never given where the answer is open to exception without the right to except being reserved. There is no real difference between a motion for payment of money into Court, for a receiver, or for an injunction. If you found it on the answer, you admit the answer to be formally correct.

The Master of the Rolls, after expressing his surprise that a question of so common occurrence should not have been determined, observed it was high time that it should be set at rest, and he should take an early opportunity of conferring with the Chancellor, and would then give his judgment. *Lane v. Paul*, June 24, 1840.

Queen's Bench.

[Before the Four Judges.]

MANDAMUS.—RAILWAY.

This Court will not issue a peremptory mandamus to compel a railway company to purchase lands and go on with the construction of the railway, except upon a clear proof that the company has abandoned its undertaking, and is evading the performance of the duties it undertook as the consideration for the powers it obtained from Parliament.

But the Court has the power to issue such a mandamus, and the Court will issue it, if there appears good ground for believing that the company is wilfully making default.

In this case a mandamus had been obtained, calling on the defendants to purchase certain lands, and go on with the works of the railway. The defendants had made a return, and on that return the case came on to be argued on a rule for a peremptory mandamus. The case was argued in the early part of this term, and the Court took time to consider the judgment. The points in issue on this rule are so fully considered in the judgment, that it has been deemed unnecessary to give any report of the arguments.

Lord Denman, C. J.—In this case a rule had been obtained for a mandamus to compel the defendants to purchase lands and complete the works under the act by which the defendants had received authority to make the railway in question. We made that rule absolute, and a return to it has been filed, and the question of the correctness of issuing the mandamus is now before us on a motion to unmake that mandamus peremptory. The defendants deny that the Court has the power to issue a mandamus in the case, and on that point we have been required to form our opinion. We have been told that our power to issue the mandamus in this case is at least doubtful, and we have been reminded that the form and method of proceeding by mandamus may prevent the revision of our judgment in another Court. That is a consideration that may induce us to act with caution in the exercise of our jurisdiction, but is not a ground for us to decline the exercise of a jurisdiction which by law we possess. We have no more right to refuse a redress which we have the power to afford, any more than we can enforce such powers as have not been confided to us. It was said here that the prosecutor might maintain an indictment, and that having that remedy in his hand, he could not require the Court to assist him by the extraordinary process of a mandamus. That argument, if it proves any thing, proves too much, for it shews that no mandamus can issue in any case in which the provisions of a statute are contravened. Besides, an indictment does not compel the performance, but only punishes the neglect, of a duty. We have indeed been reminded that a mandamus can do no more than command a party to perform an act, and punish him by imprisonment for disobedience, and that in this case, as the mandamus if issued at all, must be issued to an individual commanding him to do that which it is the duty of a company to perform, and if that writ was disobeyed, the person to whom it is directed would alone suffer imprisonment; that consequently the only result will be to create individual suffering, without at all being of force sufficient to compel the performance of the required act. This Court, however, is not accustomed to presume that individuals will disobey the writs which it issues, or be advised contumaciously to disregard the known and ancient process of the law. There was another objection raised to the mandamus, namely, that it could not ensure the execution of the work required; and in support of that argument it was said that similar acts of parliament did not impose upon parties who procured them, duties of the kind now sought to be enforced against these defendants; that such acts offered a boon which the projectors might accept or reject, or partially accept and partially reject, at their own will and pleasure; and the assertion appearing in all of them that the projectors have provided the means of executing the works therein proposed to be accomplished, was treated as affording no proof that they had sufficient funds for that purpose.

Then again it was argued that there being a provision for enabling these parties to take lands during the continuance of a certain term of years, that circumstance must be considered as a proof that the legislature intended that they should have the option of proceeding with the plan of the railway, or abandoning it at a time within the expiration of that term of years, and some decisions in the Court of Chancery were referred to in which the defendants were prohibited from taking possession of lands for a certain time, a prohibition which it was said was utterly inconsistent with the power of this Court to compel the defendants to continue the works and complete the railway. We notice all these objections for the purpose of disavowing them as objections influencing our judgment. We said when we made the rule absolute that there might be some doubt whether our powers ought to be appealed to, but we do not at all yield to the assertion that we have not the power to interfere. It is not necessary to decide on these matters, for the purpose of coming to our present decision. We cannot hold this Court incompetent to enforce an act of parliament, nor can we think any of the reasons conclusive which have been urged against our authority to make this mandamus peremptory. These points, however, we do not finally determine now, but leave them open for future consideration, should it become necessary to consider them. But we may remark, that in the discussion which formerly took place, we noticed the fact, that the directors and company had taken an act of parliament giving them certain powers in consideration of their making certain promises and undertakings, and that these had not been performed, but that the defendants had stopped short in performing them, and had represented themselves as incapable of performing the works they had undertaken. Yet it was on these undertakings that they obtained the act, and the great powers of occupying land, and raising money, which it bestows upon them. We could not, after that, permit them to say to the public "our undertakings do not bind us, because our statements as to our means were untrue: the carrying our promises into effect will not be profitable, and we have nothing to consider but the pecuniary interests of the company, and are therefore entitled to exercise an unlimited option as to executing the proposed works or any part of them." The rule for a mandamus was therefore made absolute, and the issuing of the writ ordered, on the supposition that the directors had no *bond fide* intention of proceeding with these works, but had on the contrary, abandoned their intention to complete them. But the prosecutor does not state such facts as warrant us in finally coming to that conclusion. What is stated may raise a supposition of such an intention on the part of the directors, but does not prove its existence. The act creating the company is recited in the indorsement of the writ, and from that act it appears that the defendants have the power to vary the line within a given time or must otherwise abide by

the plan. The writ then states that they had abandoned their plan; but that they had refused to purchase the land of Charles Symmons, near Yarmouth, which land was necessary for the carrying out of their new plan. Here, therefore, is no clear, and well-sustained averment that the directors and the company have altogether given up the design of the road, or that the design will not be carried into effect with all convenient speed, or that the directors have no right to an option with regard to one line of road instead of another, or have exceeded the limited time in declaring that option. All that is stated is, that the directors have refused to purchase lands at a time when Symmons required them to do so. But then that refusal is perfectly consistent with the supposition that it was made because the proposed bargain was not a fair one, or that the land was offered at a price, which in prudence they could not consider equitable. We must have a distinct charge made out against the directors, we cannot by inference find them to be in fault. Nothing but a ground of inference has been supplied to us here, and the circumstances stated fall below the case which we think to be required to shew that there is a reasonable probability of an intention to evade the performance of a duty cast on these parties by an act of parliament. The rule for a peremptory mandamus must therefore be discharged.

The Queen v. The Eastern Counties Railway.
T. T. 1840. Q. B. F. J.

DATING SIMILITER.

A common similiter, though added by a party for himself, does not require to be dated. It is not a pleading within the meaning of the Reg. Gen. Hil. T. 4 W. 4.

This was a rule to set aside a replication as irregular. The action was on a bill of exchange, and for goods sold. Pleas: first, that the defendant did not accept; secondly, that he did not promise. These pleas were delivered on the 9th of June; on the 10th the plaintiff made up the issue, but did not put any date to the similiter. The defendant then obtained the present rule.

Mr. Erle shewed cause.—The question here is, whether a similiter to a plea must, if put in by the plaintiff himself, be dated, under the authority of the rule, Hil. T. 4 W. 4.^a There is no instance of a case declaring that a date is necessary in such a case; a replication would

^a Reg. Gen. Hil. T. 4 W. 4, s. 1; 2 Dowl. P. C. 313, "every pleading as well as the declaration, shall be entitled of the day of the month and year when the same was pleaded; and every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month and year when the same took place, unless otherwise specially ordered by the Court or a judge."

undoubtedly require to be dated, and perhaps a special similiter might be subject to the same rule. But a common similiter, though put in by the party himself, did not require a date, for it was not a pleading within the meaning of the rule. But even if there is anything in the objection itself, it cannot be discussed here, for being a mere clerical error, it ought to have been brought before the judge at chambers. *Ikin v. Plevin*.^b

Mr. Gray in support of the rule.—This is not a mere clerical error, and in two cases of a similar kind the Court of Exchequer had entertained the motion. In *Shackell v. Ranger*,^c that Court took a distinction between a similiter added by the party himself, as in this case, and a similiter added for him by the other party; in the former, the Court held the addition of a date to be necessary, in the latter only it might be dispensed with. That distinction was recognised in *Middleton v. Hughes*.^d The date may become material, with a view to the future proceedings of the party, and the adding of it therefore is properly enforced.

Per Curiam.—A similiter of this kind is not a pleading within the meaning of the rule. If a party may add a similiter for his adversary without putting a date to it, he may surely do the same thing for himself.

Rule discharged.—*Eddin v. Ward*, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

PAUPER.—MISDEMEANOUR.—LIBEL.— DEFENCE.

Under certain circumstances, a defendant in an indictment for a misdemeanour, which has been removed into this Court by a writ of certiorari, may be admitted to defend in forma pauperis.

This was an indictment against the defendant for a libel; the prosecutors of it were the Society for the Prevention of Vice. The indictment had been preferred at the quarter sessions, and was subsequently removed into this Court, on an application by the defendant. The defendant was in very bad circumstances, and had made an affidavit in which he swore that he was not worth 5*l.* in the world, beyond his wearing apparel and tools of trade. He wished therefore to be admitted to defend in *forma pauperis*. A copy of the indictment alone would cost near 20*l.*

Cooper, who made the application, submitted that there was nothing unusual in it, and that the usual practice of the Court authorised it, subject to the discretion of the Court.

Williams, J., said that he understood from the officer from the Crown Office, that such a course was sometimes pursued, if the Court thought it right. If so, there was no objection

to the defendant being admitted in the present case to defend as a pauper.

Rule granted.—*Reg. v. Nicholson*, T. T. 1840. Q. B. P. C.

SETTING ASIDE NONSUIT.—RESTORING CAUSE TO LIST.—NEW TRIAL.—EJECTMENT.

If at the trial of an ejectment, the defendant does not appear to confess lease, entry and ouster, and the plaintiff is consequently nonsuited, the proper course for the defendant to pursue in order to obtain relief, is to move to set aside the nonsuit.

This was an action of ejectment. The defendant had entered into the consent rule containing the usual undertaking, in case of his not appearing to confess lease, entry and ouster. At the trial, when the cause was called on and the jury sworn, the defendant did not appear; the plaintiff was accordingly nonsuited. Subsequently an application was made in term time to restore the cause to the list.

Cresswell and *Gaselee* shewed cause against this rule, and objected that the defendant had misconceived the form of his application; the cause had not been struck out of the list, on account of no party appearing, but the plaintiff had been actually nonsuited. The proper course therefore was to apply to set aside that nonsuit, and obtain a new trial, if the defendant could shew good reason why.

James, on behalf of the defendant, contended, that although the form in which the present rule was obtained might not be the correct one, it was in the power of the Court to make such a change in that form as was requisite.

Williams, J., was of opinion that the rule had not been drawn up in the proper form, and that if the objection was taken, and no consent was given to amend the rule, he had no power to act otherwise than discharging the present rule.

Rule discharged.—*Doe d. Glasscock v. Willes*, E. T. 1840. Q. B. P. C.

JUDGMENT AGAINST THE CASUAL EJECTOR.— SPECIAL SERVICE.

Service on the sister of the tenant in possession on the premises, with an acknowledgment by the sister that the copy had been given to the tenant before the term, is sufficient to entitle the plaintiff to a rule nisi for judgment against the casual ejector.

Fitzherbert moved for judgment against the casual ejector. The affidavit on which he moved stated the service of the declaration to have been effected on the sister of the tenant in possession, in due time before the term. The affidavit also stated an acknowledgment to have been made by the sister since the term commenced, that she had given the copy before the term.

Williams, J.—I think that is sufficient for a rule nisi.

Rule granted. *Doe d. Trotter v. Roe*, T. T. 1840. Q. B. P. C.

^b 5 Dowl. P. C. 594. ^c 3 Mee. & W. 409.

^d 8 Dowl. P. C. 170.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assent.

19 June, 1840.

Indemnity.
 Cheshire Coroners.
 Tavistock Small Debt Court.
 Kingsnorton Small Debt Court.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.
 [In Select Committee.]
 For facilitating the Administration of Justice
 in Equity. Lord Chancellor.
 [In Select Committee.]
 For the commutation of Manorial Rights.
 [For second reading.] Lord Redesdale.
 Vagrants' Removal.
 [For third reading.]
 To augment the Maintenance of the poor
 Clergy. [For second reading.]
 Inclosure Acts Amendment.
 [For second reading.]

House of Commons.

Small Debt Courts for
 Liverpool,
 Marylebone,
 Wakefield Manor.
 Metropolitan Police Courts.
 [In Committee.]
 To amend the Law of Copyright.
 [In Committee.] Mr. Serjt. Talfourd.
 To improve the High Court of Admiralty.
 [Passed.]
 Costs in Frivolous Suits.
 [Passed.]
 Rated Inhabitants Evidence.
 [Passed.]
 Amendment of Inclosure Acts.
 [Passed.]
 To extend the Term of Copyright in Designs
 of woven Fabrics. Mr. E. Tennant.
 [In Committee.]
 To carry into effect the Recommendation of
 the Ecclesiastical Commissioners.
 [In Committee.] Lord J. Russell.
 To extend Freeman and Burgesses' Right of
 Election. Mr. F. Kelly.
 Drainage of Lands. Mr. Handley.
 [In Committee.]
 To amend the County Constabulary Act.
 Mr. F. Maule.
 To amend the Laws of Turnpike Trusts, and
 to allow Unions. Mr. Mackinnon.
 To consolidate and amend the Law of Sewers.
 [In Committee.]
 Summary Conviction of Juvenile Offenders.
 [In Committee.] Sir E. Wilmot.
 Summary Jurisdiction to Justices in certain
 cases of Seduction, and breach of promise of
 Marriage. Mr. W. Miles.
 To abolish capital punishment in all cases ex-
 cept Murder. Mr. Kelly.
 [For second reading.]

To amend 7 W. 4, & 1 Vict. for regulating at-
 torneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[In Committee.]

To exempt stock-in-trade and other personal
 property from being liable to be rated to the
 relief of the poor. The Attorney General.

[In Committee.]

Affirmations. [For second reading.]

Marriages Act Amendment.*

[In Committee.]

Masters in Chancery. [In Committee.]

REMOVAL OF COURTS OF LAW.

Petitions in favour have been presented
 from the attorneys in

Huddlesfield,

London and Westminster.

* This Bill relates to the registered build-
 ing, in which marriages may take place.

THE EDITOR'S LETTER BOX.

All the numbers of "The Legal Ob-
 server" may now be procured of our Publisher,
 or of any other Bookseller. Several of the
 numbers which were out of print have been
 re-printed, and imperfect sets may now be
 completed.

We regret that between thirty and forty let-
 ters, intended for insertion, are still postponed.
 Our correspondents will permit us at this sea-
 son of the year to condense their statements
 and remarks; and in this way we hope in the
 course of next month to dispose of our arrears.
 We are aware that a due space should be al-
 lowed in these pages for the communications
 of our professional brethren throughout the
 kingdom.

A correspondent inquires "whether there is
 any law to the effect that a party travelling
 along any turnpike road for the space of one
 hundred yards, is liable to pay toll, though he
 do not pass through a toll gate?" By the
 General Turnpike Act, 13 G. 3, c. 84, car-
 riages passing for a less distance than one
 hundred yards are exempt from toll. *Major*
v. Ozenham, 5, Taunt. 340; and see *Phillips*
v. Harper, 2 Chit. 412. This we suppose has
 given rise to the question of our correspondent.

A Correspondent states that though the
 principal offices have reduced the hours of at-
 tendance, there are still some in which the
 Clerks attend from nine until eight, the whole
 year round; and as the long vacation has now
 commenced, he suggests a general closing of
 offices during that time at six.

The Moot Point stated by "Leg Bail." has
 drawn forth several ingenious communica-
 tions. We apprehend we cannot introduce
 them all.

Several Cases and Queries, unaccompanied
 by any research, cannot be inserted.

The Legal Observer.

MONTHLY RECORD FOR JUNE, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

LAW OF ATTORNEYS.

UNQUALIFIED PRACTITIONERS.

WE stated, from the short-hand writer's notes, the argument before the Court of Queen's Bench in Michaelmas Term last,^a on an application to strike one *William Willis* off the roll, for allowing a person of the name of *William Allen* to practise in his name, and to commit the unqualified person to prison. The case was referred to the Master, and this term his report was read in Court. It is as follows:

This is an application against *William Willis*, one, &c. calling upon him to shew cause why he should not be struck off the roll of this Court; and against *William Allen*, calling upon him to shew cause why he should not be committed to the prison of this Court.

Willis was, in 1837, an attorney of this Court, residing, having an office, and carrying on business at Sloane Street, Chelsea.—*Allen* was formerly clerk to Messrs. North and Harrison, attorneys at Woodstock, in the county of Oxford. Sometime in the summer of 1837, *Allen* went to reside at Banbury, and commenced the business of an accountant and law stationer in that place.

Upon the door of the house in Parsons Street, Banbury, in which *Allen* resided in the first instance as a lodger, and afterwards as tenant (which he became on the 1st of January, 1838) appeared the name “*William Allen, Accountant and Law Stationer.*” In the month of June, 1838, that plate was removed, and a

fresh plate was affixed, with the name of *Willis* only. A few days after, the plate bore the inscription as under:

MR. WILLIS,
Solicitor.
MR. ALLEN.

On the 8th of September, 1838, the plate was again altered, and the name of Mr. *Allen* expunged.

It does not clearly appear at what time an office was opened in this house in Parsons Street, Banbury, in *Willis's* name. While *Allen* was only a lodger in it, in September, 1837, *Willis* agreed to give *Allen* “10*l.* per annum for the use of his (*Allen's*) office,” and *Allen's* name continued on the door, but before a year expired, in the month of June, 1838, *Willis* became tenant of the house in lieu of *Allen*, who (first a lodger) had latterly been the tenant from 1st of January preceding; and in July, *Allen* gave notice to the overseer of the poor to rate *Willis* as the occupier. The overseer omitted to act upon this notice, as he swears, from inadvertence.

In addition to his business of accountant and law stationer, *Allen* became clerk to *Willis*, at a salary of 40*l.* pound a-year by an agreement, of which the day of the date is left in blank: thus “made this day of September, 1837,” and continued to act as attorney's clerk, accountant and law stationer, till the 1st of June, 1838, when, at the request of *Willis*, he discontinued the business of a law stationer. In five instances of writs issued out of the Superior Courts at Westminster prior to June 1838, (that is to say) in the cases of *Golby v. Adams*, in October, 1837, *Allen v. Gardner*, in November 1837, *Judge v. Edwards* in March 1838, *Willetts v. Hemings* in April 1838, *Frost v. Watson* in May 1838, the writs were indorsed as issued by *W. Willis*, 158, Sloane Street, Chelsea. In a case of *Abbot v. Berry* in July 1838, and in subsequent cases, the writs were indorsed as issued by *W. Willis* of Sloane

^a 19 L. O. p. 145.

Street, or of Robert Street, Chelsea, Middlesex, and of Parsons Street, Banbury. Willis is positively proved to have been at Banbury on the 1st day of June 1838 (the day on which the house was turned over to him by Allen) and on the 18th day of July (when the agreement by which Willis became tenant of the house was executed by the landlord.) No other dates were sworn to, no proof of Willis being at Banbury before the 1st of June 1838, given to my satisfaction; and no particular instances shewn of attendance on market days as generally alleged.

None of the parties to the different actions conducted in his name appear to have brought them as the clients of Willis. There is no corroborative evidence of the connection of Willis with the county of Oxford, as sworn to in his affidavit, no proof of an extending country connection, or of business carried to him at Banbury over and above what he received from the recommendation of Allen. Only about eleven of the clients swear to having ever seen Willis, and those not specifically as to time and place, but only that they have seen and consulted him "since he commenced business at Banbury." On the other hand, no client has repudiated Willis as his attorney by any affidavit, and though one is sworn to have stated that he knew no such person as Willis, that client now swears that he only meant "that he had no personal knowledge of Willis." The persons making the application swear to their belief that the residence of Willis in Banbury was not real and *bona fide*, but a fraudulent pretence to enable Allen to carry on the business for the profit of both; and rely upon Willis and Allen using the same house at Banbury, upon Willis's distant residence at Chelsea, and his questionable attendance at Banbury, even on market days.

Allen was ostensibly an accountant. In his capacity of accountant he was employed by attorneys, and by tradesmen and others, to collect debts, for which he charged a commission if he obtained payment; but if legal proceedings were resorted to, he asked the plaintiffs to allow him to name an attorney, and frequently took a retainer in writing to authorize the attorney so introduced to institute proceedings. In such cases he did not participate in the profits of the law proceedings, but served the process, and charged for such service at the usual rate allowed to process servers.

Allen issued summonses out of the County Court, on which was a reference to himself as the person with whom to settle the claim. In issuing these summonses he acted for certain attorneys residing in different parts of the county of Oxford, and had their authority for it. In the case of *Willson v. Baynes*, in an action in the Court of Queen's Bench at Westminster, a notice was subscribed at the foot of the writ in the hand-writing of Allen:—"If you have any terms to propose, you will please to attend on Mr. Allen." It is explained that this was done to enable Allen to deduct a debt due to him from the plaintiff. Allen was in

this case employed by North (his old master) to serve the writ. North believed a copy was served on the defendant by Allen, but was not aware of the notice at the foot. It was before Allen knew any thing of Willis. In other cases from the Superior Courts at Westminster, a memorandum was subscribed at the foot of the summonses, referring the parties to Allen for a settlement; but this, it is positively sworn, was done with the sanction of the attorneys employed in all cases, except in the case of *Willson v. Baynes* last before mentioned. After he became clerk to Willis, Allen continued to write letters for the payment of debts in his own name, in his capacity of accountant. In *Willson and Hemings* Allen wrote a letter in his own name, requiring payment, while the copy writ of summons was in Allen's hand writing, indorsed with Willis's name. As clerk to Willis, it is clear and undisputed that Allen commenced and carried on much of the business. He took the retainers—he received the instructions—wrote letters of business in Willis's name—filled up the copy writ of summons, and other subsequent proceedings in a cause, and acted generally for the parties in the absence of Willis, as Willis's clerk. He issued summonses also out of the County Court; and to enable him the more effectually to do so, Willis wrote to the County Clerk, and requested that he would grant summonses, on application, to Allen, as his clerk. It does not appear that Allen ever represented himself as an attorney. In the case of *Judge v. Edwards*, on being written to by the defendant's attorney, Allen answered the letter in his own name; but that matter related to the settlement of an account, part payment having been set up, and, as Allen contends, fraudulently. There is reason to believe that some of those for whom Allen procured payment, and some of those who were directed to call at his house to settle demands made upon them, accompanied with a threat of legal proceedings if they were not paid, came to consider Allen as an attorney; but there is no proof of his having ever acted as such avowedly. The parties making the application swear to facts from which they infer a participation of profits, and a permission by Willis to Allen to use Willis's name for the advantage of Allen, an unqualified person. They rely upon the clients being Allen's, and the business conducted chiefly by Allen, and treat the clerkship as pretended, and the opening an office in the name of Willis, at Banbury, as merely colorable. There was no proof before me of Allen having ever actually received any advantage from the business carried on in Willis's name. No agreement was discovered for an admission of Allen to any share of the profits of the business, and no direct proof given of mutual profits; while the denial of any participation of profits by both Willis and Allen is express and positive. A salary to Allen, as clerk to Willis, was agreed for, and is sworn to have been paid, and Allen is sworn to have constantly acted under the agreement from Sep-

tember 1837, as a salaried clerk to Willis. Allen swears that when he wrote his own name and applied for payment of debts, it was in his capacity of accountant, and in that character he turned the business over to Willis when actions were to be brought for their recovery, obtaining the previous consent of the plaintiffs. The letters relating to proceedings in suits, Allen swears he wrote and subscribed as "clerk to Willis," and took Willis's directions.

It appears to me proper respectfully to submit this detailed statement for the consideration of the Court, as the conduct of the party, who is an officer of the Court, may be thought to call for animadversion; although I do not consider the case as brought within the provisions of the statute 22 Geo. 2, c. 46, s. 11.

FORTUNATUS DWARRIS.

*Master's Office, Temple,
January 20th, 1840.*

Since the case was heard before the Master, and after the report was prepared, but before it was read in Court, Mr. Willis died. The other party applied to the Court for his costs.

Lord Denman said—"We have no doubt that the conduct of Mr. Allen was such as made it quite proper to bring this case before the Court, deserving, as he appears to have done, the heavy censure of the officer. The rule will be discharged, but without costs."

28th May 1840. Q. B. F. J.

LAW OF MARRIAGES ABROAD.

THE article on this subject which appeared in "The Legal Observer" in January last, was written at the request of several country solicitors, who, as the personal and confidential advisers of parties desirous to come within the operation of our marriage law, had been subjected to the peculiarly painful responsibility which the present uncertain state of that law imposes. The article was written with a view to professional readers only, and when published, was intended to aid some movements, purely legal in their object, which are taking place in several country law associations towards having the marriage law put on a settled basis, out of which movements some petitions to the legislature have already sprung. The writer (himself a solicitor) has not the remotest personal interest in the subject; further than that which attaches to every professional man, liable to be called in for advice and assistance upon it, and having a strong recollection of the needless anxiety to which it has already subjected him. The original sketch

of the paper was composed under promise to a legal friend, and aimed only at embodying and arranging matters which had been the subject of many interesting professional conversations. It was written without any thought of republication, and without the knowledge that there was in operation a scheme for bringing the general subject as to the propriety of our present restrictions under the attention of the legislature. In furtherance of this scheme, the Editor of "The Legal Observer" and the writer have been requested to allow the article referred to, to be reprinted in a separate form, and in giving their assent, have desired to prefix this explanation. Whatever may be done with reference to the general subject, they feel sure the agitation of the matter must tend to the result to which their efforts were directed—that of having the law placed on a clear and well understood footing.

The great vice of our system of jurisprudence—criminal, fiscal, and civil,—and of the rules and practice of all our courts, has been nominally to continue laws and regulations which by common consent are to be only occasionally and partially obeyed. The ideas of the world as to duelling, as to all laws connected with elections and bribery, as well as with respect to those relating to adultery and divorce, afford amongst others striking examples; and the late act as to marriages is now becoming another notorious instance. So bad is the tendency of the public mind on this subject, that unless obedience is to be exacted to the law, or, in other words, unless laws are to be made with a view to the obedience which will be paid to them, legislation will come to impede, instead of advancing society; civilization and morals will be kept back rather than aided, and the law, with its vaunted majesty, like the unenforced injunctions of a weak-minded parent, must in fact become in the end, little better than a jest.

EQUITY REFORM.

THIS subject continuing to maintain its importance, almost above all others, in the range of legal improvements, we therefore conclude our report on the Lord Chancellor's Bill, by selecting, from others, the Speeches of Lord Abinger and Lord Langdale.

Lord Abinger said, he conceived the great principle of this bill to be the improvement of the administration of justice in the Court of Chancery, and that their Lordships might therefore with propriety agree to the second reading of it. The first intimation which he had received of its existence was a printed copy of it, which his learned friend on the Wool-sack had conveyed to him. He had heard some vague rumours of it before, but, as they came from no authority, he did not pay much atten-

tion to them. He was much surprised, however, to find afterwards, on coming down to the House, that the bill had been laid on their Lordships' table. It was not his intention, after the very able and distinct manner in which his noble and learned friend, (Lord Lyndhurst,) had, as he thought, answered the arguments of the noble lord on the woollack, to trouble their Lordships with many observations. It was true that since the act for the commutation of tithes had passed, there had not been a single suit on that subject in the Court of Exchequer; but if that kind of suit was altogether abstracted from the calculation, he thought there had of late been rather an increase than a diminution in the business. There were many petitions presented to that Court for paying over money to parties in various cases, which were more in the nature of suits than mere petitions. Now, in the last year, when the noble lord had stated the number of causes on the equity side of the Exchequer was only 102, there were no less than 433 petitions of the sort he had just mentioned, and yet there was no arrear. But if the equity business were to be transferred to the Court of Chancery, not only would that Court have all the suits now in the Court of Exchequer, but also all the petitions which were in the nature of suits. If his noble and learned friend had attended more to the defects in the Court of Chancery, he thought he could have presented a much more disgusting picture as to the accumulation of business than by referring only to the defects of the Court of Exchequer. With respect to costs, the difference in the costs of the two courts was very great; but the reason was this—that in the 3d and 4th year of the reign of his late Majesty a bill passed this house which reduced the fees of the officers of the Court of Chancery, but the same thing not having been done as to the Court of Exchequer, the expense there was much greater. But nothing was more simple than to reduce those costs. It was said that solicitors would not go to the Equity Court of Exchequer; but he did not think that was the case, and he considered that if that court were abolished, it would be one of the greatest injuries to the public that could be inflicted. He found that the class of suitors who now came to the Exchequer consisted of those who could not afford to pay the expense of the Court of Chancery arising from delay. If the property were very rich, if the funds were large, the suit found its way into the Court of Chancery, and there it might be for a very considerable time. But if a man wished the matter to be decided immediately, and if the property were not very great, the Court of Exchequer was chosen. He might mention an illustration of this which came within his own knowledge. Lately a bill was filed in the Court of Exchequer by a trustee for the due administration of his testator's estate. On a motion, however, that was made to the court, it was discovered that a bill had already been filed in the Court of Chancery. He (Lord Abinger) then said he should not decide upon it, but should refer it to the tribu-

nal it was first taken to. But the argument made use of for not going to the Court of Chancery was, that the suitor would be detained there five years, whilst, if he (Lord Abinger) would hear it, it would be settled in five hours. If, then, the Equity Court of Exchequer were abolished, they would take away from suitors of a certain class a court in which they now found refuge, and those suitors would become clients to solicitors who wished their causes to last a long time. The delay which occurred in the Court of Chancery was, as he believed, one reason for many bills being filed there. Many years ago, he knew a bill filed by a gentleman against his father-in-law for not settling property according to the agreement before the marriage; and the answer of the father-in-law was, that he settled on the plaintiff three suits in Chancery, which ought to last his lifetime. Why, the term fees alone, in consequence of the arrears of business, in that Court amounted, he believed, to as much as 20,000*l.* a-year. He submitted that it would be better to improve the Court of Exchequer than to abolish it. He had no interest in the subject in that respect: on the contrary, if the Court were abolished, he should be relieved from a great part of his labours; but he was satisfied that such a step could by no means be beneficial to the public. If the noble Lord on the Woollack could show that he could get through all the business now in the Court of Chancery, then perhaps the equity side of the Exchequer might be abolished; but unless that could be shown, let not the court be abolished, merely because the costs were great, and there were some few other objections to it. The better course would be to lessen the costs of the court and correct its other defects. He wished to make one observation on another part of the bill. The Master of the Rolls was now of very essential importance to the Lord Chancellor: he assisted him in a great number of causes; and he would throw it out for the consideration of his noble and learned friend on the woollack, whether, instead of making the Master of the Rolls Vice President of the Privy-Council, it would not be a much wiser and more efficient course to appoint his own Vice Chancellor to that office. He should not trouble their lordships with any further remarks, except that he should oppose with his utmost force the abolition of the equity side of the Exchequer.

Lord Langdale said that, as the second reading of this bill was not opposed, he would not occupy much of their lordships' time; but there were some parts of the bill on which it might appear right that he should address some observations to their lordships. In this case it was no longer a question whether additional assistance was or was not required in the Court of Chancery. Every one agreed that it was, but the mode of giving it still required consideration. When he entered the house to-night, and was informed that his noble and learned friend opposite had expressed his intention to support the second reading of the bill, he must say he felt very great satisfaction; but it was needless to say that after his noble

and learned friend had expressed that intention, it was impossible for any friend of the bill to hear his objections stated one after another in his clear and forcible manner without feeling deep disappointment. That disappointment, however, was somewhat alleviated when he found that his noble and learned friend said it was done rather as stating points for consideration than as objecting to the bill, and that he should enter into the discussion in the committee free from any bias whatever. Let that be so, and he should have no doubt of the issue of the bill. There were many parts of it upon which he would not take up their lordships' time, but it was right he should state his reasons why he supported one part which might be supposed to have some relation to him individually, or to the office he filled.

He had formerly stated to their lordships his views as to what ought to be done in the Court of Chancery, and which required much more than was now proposed. He had reconsidered that opinion, but had never had any reason to alter it. One point was to unite the jurisdiction of the privy council and the appellate jurisdiction of the House of Lords. But the Court of the Privy Council was now to continue as a separate jurisdiction. The time that court sat was at the utmost forty or fifty days in the year, and it was said if they attended regularly it would amount to much less. But the judges did not attend their courts more than two hundred days in the year, so that if they were to assist the Court of the Privy Council, it would occupy one fourth of their time. If one of the judges were appointed to perform the duties contemplated by this measure, it was quite clear, from what he had already stated, that the duties arising from that appointment would consume the fourth part of his time. This he presumed their lordships would agree with him in thinking was not an arrangement which could be made to apply with convenience to any of the judges; but if they resolved upon adopting it, they must do one of two things—they must either borrow a judge from some other court, or they must appoint a judge expressly for the purpose in view. He took for granted that no one in that house proposed that the judicial business of the Privy Council should be transacted by the president of the Council, by the Lord Privy Seal, or by the Chancellor of the Duchy of Lancaster. It surely was not proposed to make judges of them; he therefore repeated that they must borrow a judge. Then came the question whence should that judge be taken? He had been asked by his noble and learned friend whether or not he could support the measure in its present shape. Setting aside all personal considerations, he did think it right to accede to the proposition; but at the same time he wished their lordships to understand that the office of the Master of the Rolls was one, the duties of which had of late greatly increased. Formerly the Master of the Rolls did not sit above twelve, or at the utmost sixteen hours in the week; he need hardly remind the house that that was not the

case at present; still he was of opinion that if they were to take away a judge fully occupied there was none more likely to be conversant with the business which usually came before the Privy Council than the same individual who might be thought competent to discharge the duties of Master of the Rolls. There was also this important consideration, of which their lordships ought not to lose sight, that the efficiency of the court to be created under this bill would very much depend upon the bar which attended it. If the Master of the Rolls went to the Committee of the Privy Council, he would naturally be followed by the counsel practising in his court, a regular bar would therefore be obtained at once for the new jurisdiction. He could very sincerely say that he had much rather remain where he was than be removed from the place where his duties lay and where his affections would lead him to remain—namely, his own court. The change did not suit him, and he had never desired it. He had troubled their lordships with these few words for the purpose of explaining why he did not oppose the second reading of the bill.

PARLIAMENTARY RETURNS RELATING TO THE COMMON LAW COURTS.

QUEEN'S BENCH.

1. NUMBER of Actions commenced each year, for five years prior to the 25th of April, 1834, and five years subsequent thereto.

From		
25th April, 1829, to 25th April, 1830	65,038	
" 1830 " 1831	65,190	
" 1831 " 1832	62,375	
" 1832 " 1833	52,698	
" 1833 " 1834	59,351	
Total - -		304,652

- Five years subsequent to the 25th April, 1834.

From		
25th April, 1834, to 25th April, 1835	34,644	
" 1835 " 1836	35,347	
" 1836 " 1837	56,077	
" 1837 " 1838	64,932	
" 1838 " 1839	57,929	
Total - -		248,929

Fortunatus Dwarries. Jas. Bunce.
A. W. Croft. C. R. Turner.
R. Goodrich.

2. Special Cases and Demurrers standing for argument on the first day of the Terms respectively, from Trinity Term, 1829, to Easter Term, 1834, both inclusive, being a period of five years.

Trinity Term, 1829	..	..	..	60
Michaelmas " "	..	..	..	36

Hilary	"	1830	..	..	50	Trinity	"	"	..	..	97
Easter	"	"	..	..	60	Michaelmas	"	"	..	..	72
Trinity	"	"	..	..	71	Hilary	"	1833	..	..	93
Michaelmas	"	"	..	..	83	Easter	"	"	..	..	83
Hilary	"	1831	..	..	83	Trinity	"	"	..	..	104
Easter	"	"	..	..	89	Michaelmas	"	"	..	..	57
Trinity	"	"	..	..	84	Hilary	"	1834	..	..	65
Michaelmas	"	"	..	..	60	Easter	"	"	..	..	61
Hilary	"	1832	..	..	46						Total - - 1,538
Easter	"	"	..	..	41						
Trinity	"	"	..	..	28						
Michaelmas	"	"	..	..	17						
Hilary	"	1833	..	..	22						
Easter	"	"	..	..	38						
Trinity	"	"	..	..	32						
Michaelmas	"	"	..	..	20						
Hilary	"	1834	..	..	13						
Easter	"	"	..	..	47						
					Total - - 980						

Special Cases and Demurrers standing for argument on the first day of the Terms respectively, from Trinity Term, 1834, to Easter Term, 1839, both inclusive, being a period of five years.

Trinity	Term, 1834	..	..	..	49	Hilary	"	1837	..	..	..	166
Michaelmas	"	"	..	..	55	Easter	"	"	..	..	..	161
Hilary	"	1835	..	..	64	Trinity	"	"	..	..	..	193
Easter	"	"	..	..	76	Michaelmas	"	"	..	..	..	153
Trinity	"	"	..	..	72	Hilary	"	1838	..	..	..	173
Michaelmas	"	"	..	..	77	Easter	"	"	..	..	..	158
Hilary	"	1836	..	..	98	Trinity	"	"	..	..	..	207
Easter	"	"	..	..	102	Michaelmas	"	"	..	..	..	174
Trinity	"	"	..	..	121	Hilary	"	1839	..	..	..	200
Michaelmas	"	"	..	..	125	Easter	"	"	..	..	..	177
Hilary	"	1837	..	..	135	Total - - 2,925						
Easter	"	"	..	..	140	4. Peremptory or Enlarged Rules standing for argument on the first day of the Terms respectively, from Trinity Term, 1829, to Easter Term, 1834, both inclusive, being a period of five years.						
Trinity	"	"	..	..	133							
Michaelmas	"	"	..	..	133							
Hilary	"	1838	..	..	139							
Easter	"	"	..	..	142	Trinity	Term, 1829	..	..	..	54	
Trinity	"	"	..	..	148	Michaelmas	"	"	..	..	..	47
Michaelmas	"	"	..	..	150	Hilary	"	1830	..	..	..	72
Hilary	"	1839	..	..	110	Easter	"	"	..	..	..	56
Easter	"	"	..	..	96	Trinity	"	"	..	..	..	59
Total - - 2,165					Michaelmas								49

3. New Trials standing for argument on the first day of the Terms respectively, from Trinity Term, 1829, to Easter Term, 1834, both inclusive, being a period of five years.

Trinity	Term, 1829	..	..	96	Michaelmas	"	"	..	..	48
Michaelmas	"	"	..	74	Hilary	"	1832	..	..	53
Hilary	"	1830	..	81	Easter	"	"	..	..	51
Easter	"	"	..	87	Trinity	"	"	..	..	63
Trinity	"	"	..	124	Michaelmas	"	"	..	..	48
Michaelmas	"	"	..	82	Hilary	"	1833	..	..	70
Hilary	"	1831	..	93	Easter	"	"	..	..	81
Easter	"	"	..	77	Trinity	"	"	..	..	70
Trinity	"	"	..	89	Michaelmas	"	"	..	..	69
Michaelmas	"	"	..	62	Hilary	"	1834	..	..	85
Hilary	"	1832	..	83	Easter	"	"	..	..	60
Easter	"	"	..	58						
									Total	- - 1,213

New Trials standing for argument on the first day of the Terms respectively, from Trinity Term, 1834, to Easter Term, 1839, both inclusive, being a period of five years.

Trinity	Term, 1834	..	..	..	94
Michaelmas	" "	..	..	..	65
Hilary	" 1835	..	..	..	97
Easter	" "	..	..	..	99
Trinity	" "	..	..	..	129
Michaelmas	" "	..	..	..	112
Hilary	" 1836	..	..	..	151
Easter	" "	..	..	..	144
Trinity	" "	..	..	..	146
Michaelmas	" "	..	..	..	126
Hilary	" 1837	..	..	..	166
Easter	" "	..	..	..	161
Trinity	" "	..	..	..	193
Michaelmas	" "	..	..	..	153
Hilary	" 1838	..	..	..	173
Easter	" "	..	..	..	158
Trinity	" "	..	..	..	207
Michaelmas	" "	..	..	..	174
Hilary	" 1839	..	..	..	200
Easter	" "	..	..	..	177

Total - - 2,925

4. Peremptory or Enlarged Rules standing for argument on the first day of the Terms respectively, from Trinity Term, 1829, to Easter Term, 1834, both inclusive, being a period of five years.

Trinity	Term, 1829	..	..	..	54
Michaelmas	" "	..	..	..	47
Hilary	" 1830	..	..	..	72
Easter	" "	..	..	..	56
Trinity	" "	..	..	..	59
Michaelmas	" "	..	..	..	44
Hilary	" 1831	..	..	..	67
Easter	" "	..	..	..	61
Trinity	" "	..	..	..	63
Michaelmas	" "	..	..	..	40
Hilary	" 1832	..	..	..	53
Easter	" "	..	..	..	51
Trinity	" "	..	..	..	63
Michaelmas	" "	..	..	..	48
Hilary	" 1833	..	..	..	70
Easter	" "	..	..	..	81
Trinity	" "	..	..	..	70
Michaelmas	" "	..	..	..	69
Hilary	" 1834	..	..	..	85
Easter	" "	..	..	..	60

Total - - 1,213

Peremptory or Enlarged Rules standing for argument on the first day of the Terms respectively, from Trinity Term, 1834, to Easter Term, 1839, both inclusive, being a period of five years.

Trinity Term, 1834	..	..	..	78
Michaelmas	"	"	..	37
Hilary	"	1835	..	53
Easter	"	"	..	58
Trinity	"	"	..	85
Michaelmas	"	"	..	61
Hilary	"	1836	..	66
Easter	"	"	..	84
Trinity	"	"	..	85
Michaelmas	"	"	..	71
Hilary	"	1837	..	80
Easter	"	"	..	90
Trinity	"	"	..	88
Michaelmas	"	"	..	73
Hilary	"	1838	..	115
Easter	"	"	..	121
Trinity	"	"	..	137
Michaelmas	"	"	..	89
Hilary	"	1839	..	78
Easter	"	"	..	76

Total - - 1,625

5. Days on which the Judges of the Court of Queen's Bench sat in Banco after the Terms hereunder respectively mentioned, under the provisions of the Act 1 & 2 Vict.. c. 32.

After Michaelmas Term, 1838	..	5 days.
After Hilary Term, 1839	..	5 —
After Trinity Term, 1839	..	9 —
After Michaelmas Term, 1839	..	5 —
After Hilary Term, 1840	..	3 —

Total - - 27 —

Cases standing for argument in the Crown Paper on the first day of each Term, for the period of five years next before Easter Term, 1834, and five years subsequent thereto.

Easter Term, 1829	..	..	..	13
Trinity	"	"	..	27
Michaelmas	"	"	..	22
Hilary	"	1830	..	23
Easter	"	"	..	44
Trinity	"	"	..	39
Michaelmas	"	"	..	25
Hilary	"	1831	..	32
Easter	"	"	..	37
Trinity	"	"	..	29
Michaelmas	"	"	..	30
Hilary	"	1832	..	37
Easter	"	"	..	43
Trinity	"	"	..	27
Michaelmas	"	"	..	32
Hilary	"	1833	..	22
Easter	"	"	..	34
Trinity	"	"	..	29
Michaelmas	"	"	..	36
Hilary	"	1834	..	38
Easter	"	"	..	43

Trinity	"	"	..	..	41
Michaelmas	"	"	..	..	57
Hilary	"	1835	..	..	52
Easter	"	"	..	..	40
Trinity	"	"	..	..	39
Michaelmas	"	"	..	..	43
Hilary	"	1836	..	..	49
Easter	"	"	..	..	49
Trinity	"	"	..	..	52
Michaelmas	"	"	..	..	47
Hilary	"	1837	..	..	48
Easter	"	"	..	..	43
Trinity	"	"	..	..	40
Michaelmas	"	"	..	..	40
Hilary	"	1838	..	..	29
Easter	"	"	..	..	28
Trinity	"	"	..	..	27
Michaelmas	"	"	..	..	19
Hilary	"	1839	..	..	18

Cases remaining in the Crown Paper undetermined at the end of each Term, are carried on from Term to Term, until they are heard and determined.

The number of Cases standing for argument on the first day of every Term mentioned in this return, comprise as well new Cases then first entered for argument, as those remaining undetermined at the end of the Term then next preceding.

Chas. F. Robinson,
Clerk of the Rules (Crown side).

EXCHEQUER OF PLEAS.

Number of Actions commenced in the Court of Exchequer of Pleas, each year, for the period of five years prior to the publication of the Warrant of his late Majesty King William the Fourth, under which the Court of Common Pleas was opened to King's Counsel and Outer Barristers, and which was published in that Court on the 25th day of April, 1834, and five years subsequent thereto.

			instances.	
25th April, 1829, to 24th April, 1830			}	7,660
both inclusive				
"	1830	"	1831	10,276
"	1831	"	1832	31,586
"	1832	"	1833	39,089
"	1833	"	1834	42,064
"	1834	"	1835	41,573
"	1835	"	1836	41,909
"	1836	"	1837	42,748
"	1837	"	1838	43,697
"	1838	"	1839	42,945

COMMON PLEAS.

The accompanying Return, as regards the Court of Common Pleas, is imperfect. That part of the Order requiring a Return of the number of Causes, distinguishing between special jury and common jury causes standing for trial at Nisi Prius in London and Middlesex on the first day of each sitting, cannot be complied with by the Masters of the said Court, the

Marshal of the Lord Chief Justice being the officer who is alone enabled to make such return.

The Return required of the number of summonses taken out at the Chamber of the Judges of the Court of Common Pleas, in the months of January and February, 1839, can alone be furnished by the clerks to the respective Judges.

Copies of the Order of the Honourable the House of Commons have been respectively delivered to the Marshal, and at the Chamber of the Judges of the said Court.

H. B. Ray,
Senior Master of the Court
of Common Pleas.

Number of Actions commenced in the Court of Common Pleas in each year, for the period of five years prior to the 25th day of April, 1834, and of five years subsequent thereto; date at which the Court of Common Pleas gave its judgment, determining no longer to hear Queen's Counsel and Outer Barristers, but to restore an exclusive privilege to the Serjeants; of the number of Causes and Rules standing for argument respectively in the Special Paper, New Trial Paper, and Paper for Enlarged Rules, on the first day of each Term within the said period; and of the number of days after each Term appointed for Sitting under the Act 1 & 2 Vict. c. 32; viz.—

Number of Actions commenced in each of the five years prior to the 25th of April, 1834.

From 25 April, 1829, to 25 April, 1830	17,115
" 1830 " 1831	13,226
" 1831 " 1832	11,558
" 1832 " 1833	13,630
" 1833 " 1834	14,897

Number of Actions commenced in each of the five years subsequent to the 25th of April, 1834.

From 25 April, 1834, to 25 April, 1835	14,486
" 1835 " 1836	11,013
" 1836 " 1837	12,305
" 1837 " 1838	13,100
" 1838 " 1839	17,680

The Court of Common Pleas gave its judgment, restoring the exclusive privilege to the Serjeants, on Monday, 20th January, 1840.

Number of Causes and Rules standing for argument respectively in the Special Paper, New Trial Paper, and Paper of Enlarged Rules, in each of the five years prior to the 25th of April, 1834.

On the first day of—		Special Paper.	New Trial Paper.	Enlarged Rules.
Trinity Term, 1829	..	—	6	11
Michaelmas " "	..	—	nil	13
Hilary " 1830	..	—	{ Paper not kept.	
Easter " "	..	—	ditto.	
Trinity " "	..	—	40	12
Michaelmas " "	..	—	19	10

Hilary " 1831	..	—	33	7
Easter " "	..	—	12	4
Trinity " "	..	—	17	6
Michaelmas " "	..	—	nil	7
Hilary " 1832	..	—	{ Paper not kept.	
Easter " "	..	—	11	7
Trinity " "	..	—	19	3
Michaelmas " "	..	—	3	4
Hilary " 1833	..	—	5	6
Easter " "	..	—	7	6
Trinity " "	..	—	20	7
Michaelmas " "	..	—	5	1
Hilary " 1834	..	—	14	10
Easter " "	..	—	15	12

Number of Causes and Rules standing for argument respectively in the Special Paper, New Trial Paper, and Paper of Enlarged Rules, in each of the five years subsequent to the 25th of April, 1834.

On the first day of—		Special Paper.	New Trial Paper.	Enlarged Rules.
Trinity Term, 1834	..	—	25	6
Michaelmas " "	..	—	6	3
Hilary " 1835	..	—	14	10
Easter " "	..	—	16	9
Trinity " "	..	—	26	4
Michaelmas " "	..	—	11	7
Hilary " 1836	..	—	38	11
Easter " "	..	—	29	8
Trinity " "	..	—	44	2
Michaelmas " "	..	—	11	1
Hilary " 1837	..	—	32	14
Easter " "	..	—	{ Paper not kept.	
Trinity " "	..	—	28	7
Michaelmas " "	..	—	12	6
Hilary " 1838	..	25	17	8
Easter " "	..	32	25	3
Trinity " "	..	34	29	8
Michaelmas " "	..	30	20	5
Hilary " 1839	..	36	38	23
Easter " "	..	39	52	19

Note.—With reference to the number of Causes standing for argument in the Special Paper on the First day of each Term, the Masters are unable to make a return thereof prior to the year 1838, as by the practice of the Court, as it then existed, the Causes in the Special Paper that were undisposed of in any Term, were not carried to the next Term's list as arrears, but were set down anew, at the option of the party, at any time during the Term.

Days appointed for Sitting in Banco out of Term, under 1 & 2 Vict., c. 33; viz.

After Hilary Term, 1839. { Feb. 5, 6, 7, 8,
and 9.
After Trinity Term, 1839. { June 13, 14, 15, 19,
20, 21 and 22.

H. B. Ray,
Senior Master of the Common Pleas.

THE following is extracted from a return made to the House of Commons, containing the names, dates of appointment, and amount of salaries of the Recorders appointed to preside at Quarter Sessions:—

		£.	s.	d.	per ann.	
Abingdon	Henry John Shepherd	40	0	0	—	Prior to 1835
Audover	C. H. Bellenden Ker	65	0	0	—	29 July, 1836
Banbury	C. H. Elsley	52	10	0	—	13 June, 1836
Bath	David Jardine	250	0	0	—	18 Feb. 1837
Barnstaple	William Mackworth Praed ..	42	0	0	—	18 June, 1836
Berwick-on-Tweed	Robert Ingham	120	0	0	—	21 May, 1832
Bideford	William Mackworth Praed ..	42	0	0	—	18 June, 1836
Birmingham	Matthew Davenport Hill ..	300	0	0	—	6 May, 1839
Bolton	Robert Baynes Armstrong ..	200	0	0	—	24 May, 1839
Bridgnorth	Uvedale Corbet	40	0	0	—	1 Nov. 1836
Bristol	Sir Charles Wetherell	400	0	0	—	28 July, 1827
Buckingham	E. H. Maltby	50	0	0	—	26 July, 1836
Bury St. Edmund's	William Gordon	42	0	0	—	25 Nov. 1839
Cambridge	Mr. Serjeant Storks	42	0	0	—	13 June, 1836
Cardmarthen	John Wilson	63	0	0	—	4 June, 1836
Canterbury	William Fuller Boteler	40	0	0	—	24 April, 1807
Chester	John Cottingham	105	0	0	—	27 Feb. 1836
Chichester	William Milton Bridger	40	0	0	—	16 Aug. 1820
Colchester	Charles Gray Round	60	0	0	—	20 Dec. 1832
Coventry	George Long	100	0	0	—	21 Oct. 1836
Dartmouth	Peter S. Carey	40	0	0	—	17 June, 1836
Deal	William Fuller Boteler	30	0	0	—	31 July, 1832
Derby	John Balfour	50	0	0	—	28 Feb. 1826
Devizes	William Heald Ludlow Bruges	30	0	0	—	1833
Doncaster	Francis Maude	42	0	0	—	24 Feb. 1832
Dover	William Henry Bodkin	50	0	0	—	14 Nov. 1834
Exeter	Francis Newman Rogers	105	0	0	—	June, 1835
Falmouth	Thomas Paynter	40	0	0	—	26 July, 1836
Faversham	P. V. Gambier	40	0	0	—	22 Oct. 1836
Folkestone	Edward Drake Brockman	30	0	0	—	20 June, 1836
Gloucester	George Chilton	100	0	0	—	21 Feb. 1837
Grantham	John Hildyard	40	0	0	—	6 June 1836
Guildford	Hon. George Chappel Norton	52	10	0	—	Aug. 1836
Hastings	Edward Clark	42	0	0	—	29 June 1839
Helston	Thomas Paynter	40	0	0	—	13 Oct. 1836
Hereford	Joseph Grace Smith	50	0	0	—	21 Feb. 1837
Hythe	William Fuller Boteler	30	0	0	—	9 July 1836
Ipswich	Sir Charles Frederick Williams	42	0	0	—	11 Mar. 1831
King's Lynn	Martin John West	60	0	0	—	23 April, 1823
Kingston-upon-Hull ..	Matthew Talbot Baines	150	0	0	—	21 Feb. 1837
Leeds	James Flower Ellis, jun.	200	0	0	—	1 May, 1839
Leicester	John Hildyard	105	0	0	—	24 Feb. 1835
Lichfield	Henry Waddington	63	0	0	—	3 Aug. 1838
Lincoln	Nathaniel Richard Clarke	100	0	0	—	31 May, 1836
Liverpool	James Clarke	500	0	0	—	8 Oct. 1821
Ludlow	John Buckle	50	0	0	—	6 Dec. 1838
Maidstone	David Pollock	50	0	0	—	15 Dec. 1839
Maldon	Joseph Green Walford	none			—	1 May, 1819
Manchester	Robert Baynes Armstrong ..	500	0	0	—	1 May, 1839
Newark	Nathaniel Richard Clarke	42	0	0	—	20 May, 1833
Newbury	William Whateley	40	0	0	—	20 Sept. 1832
Newcastle-under-Lyne	Fortunatus Dwarries	50	0	0	—	25 Oct. 1837
Newcastle-upon-Tyne	George Hutton Wilkinson	200	0	0	—	3 Mar. 1836
Nottingham	Richard Wildman	168	0	0	—	15 June, 1837
Northampton	Nathaniel Richard Clarke	100	0	0	—	31 May, 1836
Norwich	Isaac Jermy	150	0	0	—	23 Dec. 1830
Oxford	James Manning	100	0	0	—	6 June, 1836
Penzance	Thomas Paynter	60	0	0	—	19 Dec. 1837
Plymouth	William Carpenter Rowe	200	0	0	—	25 Feb. 1836
Pontefract	Henry Taylor	40	0	0	—	28 Feb. 1814
Poole	William Bond	52	10	0	—	23 July, 1834
Portsmouth	Peregrine Bingham	67	4	0	—	16 Nov. 1838
Reading	Henry Alworth Merewether ..	42	4	0	—	12 March, 1830
Richmond	Charles Henesge Elsley	30	0	0	—	9 Nov. 1838
Saffron Walden	Vicesimus Knox	60	0	0	—	18 May, 1836

Sandwich	William Fuller Boteler	40	0	0	—	
Sarum, New	Robert Benson	105	0	0	—	6 June, 1836
Scarborough	Charles Heneage Elsley	50	0	0	—	13 June, 1836
Shrewsbury	Charles Harwood	50	0	0	—	15 Nov. 1839
Southampton	Peregrine Bingham	52	10	0	—	5 Nov. 1830
Stainford	John Hildyard	42	0	0	—	15 June, 1836
Sudbury	James Manning	40	0	0	—	20 Oct. 1836
Tewkesbury	Alexander Wright Daniel	40	0	0	—	17 Aug. 1836
Thetford	Thomas Jacob Birch	40	0	0	—	19 Feb. 1839
Tiverton	John Tyrrell	40	0	0	—	22 June, 1836
Walsall	Nathaniel Richard Clarke	80	0	0	—	Prior to 1835
Warwick	Henry Waddington	50	0	0	—	26 July, 1836
Wigan	Robert Segar	50	0	0	—	4 July, 1836
Winchester	Philip Williams	42	0	0	—	Jan. 1836
Windsor, New	Hon. John Chetwyn Talbot	63	0	0	—	4 June, 1836
Worcester	John Buckle	100	0	0	—	17 June, 1836
Yarmouth	Nathaniel Palmer	63	0	0	—	2 June, 1836
York	Charles Heneage Elsley	136	10	0	—	14 June, 1833

ANNUAL REPORT OF THE LAW ASSOCIATION.

The following is the Report of the Board of Directors, made to the Annual General Court, on Thursday, 14th May, 1840, Benjamin Brooks, Esq. in the chair.

The directors have much satisfaction in announcing to the members at large the advancing prosperity of the association, and in stating that by means of the purchase of stock, directed to be made at the last general court, the capital now amounts to 18,000*l.* three per cent., producing an income of 540*l.* per annum.

This sum, however, is by no means equal to the demands upon the funds, but is sufficiently large to convince the friends of the association of the propriety of the investments which have from time to time been made.

In consequence of so many of the members having become life subscribers, and of the decrease of many others, the income arising from annual subscriptions has been gradually reduced, and is at present little more than 400*l.* a-year.

During the year the directors have acted upon the principles of former boards, by adopting towards the legitimate claimants a liberal scale of allowance, proportioned to the wants of the parties, and the number of persons in each family to participate in the bounty. They have, however, the satisfaction to report, that no new case of this description has come before them.

The sum expended among the families of deceased members has amounted in the past year to 87*l.* 2*s.*, affording relief to upwards of sixty individuals, and being, within a fraction, the same amount as was appropriated last year to cases of a like description.

Three applications have come before the board, on the part of members of the association, under the provisions of the 55th law. In two of these cases, which were marked by cir-

cumstances of great difficulty and distress, the board have thought fit to return to the parties the amount of their subscription. The other was considered as not coming within the scope of the society, so as to entitle the applicant to relief.

The board refer to the tabular statement at the end of the report, shewing the comparative amount of income and expenditure, from which it will be seen, that within the last ten years the amount of relief has been more than quadrupled. Upon this point they also beg to refer to the report of last year.

The last annual general court awarded 100*l.* for the relief of non-members' families. Of this sum 89*l.* only has been expended; but that amount has proved essentially servicable to the parties among whom it has been distributed; and the directors recommend to the general court that a similar grant should be made for the ensuing year. They, however, agree with their predecessors in thinking that a separate subscription should be set on foot for this description of cases.

Seventeen new members have been added to the list during the past year.

With a view of making the association better known, and of obtaining more liberal support by the profession, the board are now circulating among the members of the Law Society a tabular statement, containing a short summary of the objects, and list of members of the association.

The directors have to notice a further donation of ten guineas from W. Freshfield, Esq., M. P., one of the trustees: and they beg to offer him their thanks for his continued liberality.

In conclusion, the directors beg to call the attention of the members to the small proportion of the practising Solicitors of London who have yet given their support to this society, and they hope that some exertions will be made to increase the list, and thus contribute to the extension of the benefits of this useful and benevolent institution.

(By order of the Board,)

JOHN MURRAY, Secretary.

CANDIDATES WHO PASSED AT THE TRINITY TERM EXAMINATION, 1840.

<i>Clerk's Name.</i>	<i>Name and residence of attorney to whom articulated, assigned, &c.</i>
Alderson, Alfred	Robert Williams, Carnarvon.
Alman, Michael	William Bevan, Bristol.
Arundel, James Whitton	John Thomas Miller, 3, Furnival's Inn; assigned to James Taylor, 15, Furnival's Inn; Alfred Bell, 59, Lincoln's Inn Fields.
Ashton, William Henry	Charles Hudson, Vernon Street, Stockport.
Attwood, Richard Henry	Charles Collins, Swansea.
Baker, Thomas	Samuel Duckinfield Darbishire, Manchester; assigned to Thomas Rainford Ensor, 14, South Square, Gray's Inn.
Banner, Edward	Matthew Dobson Lowndes, Liverpool.
Beatniffe, Robert Gray	George Babb, Great Grimsby.
Bellhouse, Thomas Taylor	Thomas Taylor, Wakefield.
Bennett, John William	Charles Constable, 10, Symond's Inn; James Joseph Blake, 24, Essex Street, Strand.
Best, William	James Best, Worcester.
Bolton, Peter John	Richard Jackson, 19, Parliament Street, Kingston-upon-Hull; ass ^d to Wm. Tredway Clarke, 30, Great James Street, Bedford Row.
Brown, Joseph Thomas	Michael Clayton, Lincoln's Inn; assigned to William Strickland Cookson, Lincoln's Inn.
Burton, William Warwick	Septimus Burton, 12, Serle Street.
Bury, John, the younger	George Humphreys, Manchester.
Carter, Alfred	John Carter, Coventry.
Chambers, Joseph	James Hoskins, Portsmouth.
Chauntler, Thomas	Thomas Hodgson Holdsworth, Gray's Inn.
Clark, Thomas	Jonathan Ward, Stokesley, Yorkshire; Bowyer Mewburn, 9, Great Winchester Street.
Clarke, Edward Salmon	Arthur Clarke, Bishopsgate Church Yard.
Clarke, William	Somers Clarke, Brighton.
Clifton, William Henry	John Parker, Worcester.
Cooper, Charles	George Streater Kempson, 31, Abingdon Street.
Copp, Alfred	Matthew Paramore, Bridgwater, co. Somerset.
Croft, John	Charles Richard Roberts, 35, Seething Lane, London.
Darwell, Thomas, jun.	Henry Beever, Salford, Lancashire; assigned to James Frederick Beever, Salford.
Davies, Henry Daniel	Daniel Davies, 21, Warwick Street, Regent Street.
Davies, Thomas	Oliver Lloyd, Cardigan.
Davies, Edward Martin	Thomas Thomas, Swansea.
Day, John	Edward Amos Chaplin, 3, Gray's Inn Square.
Densham, Richard	George Sharp, 20, Upper Wharton Street, Lloyd Square.
Dolman, Frederick William	Robert Cruickshank, Gosport; ass ^d to Antonine Dufaur, 25, Lincoln's Inn Fields.
Doughty, Thomas Neale	William Saltwell, Carlton Chambers, Regent Street.
Drew, Henry Richard	Richard Matthews, March.
Edwards, William James	William Edwards, Framlingham, Suffolk.
Edwards, William	William Hazard, Redenhall-with-Harleston.
Ellis, Arthur	George Streater Kempson, 31, Abingdon Street; assigned to John Luke Wetten, 48, Conduit Street.
Etches, William Macconnell	William Pashley Milner, Sheffield; assigned to Thomas James Parker, Sheffield.
Eyre, William Vardy	Samuel Field, Deddington.
Eyre, Frederick Edwin	Walpole Eyre, 22, Bryanstone Square; assigned to John Pinniger, 1, Gray's Inn Square.
Fell, Robert	John Burren, Durham.
Finlow, Richard Whiteley	Richard Finlow, Liverpool.
Fooks, Thomas, the younger	Henry Charles Goodden, Sherborne, Dorset.
Foster, Thomas	Joseph Foster, Wolverhampton; assigned to Edward Henry Rickards, 29, Lincoln's Inn Fields.
Futvoye, Edward	James Fairbank, Staple Inn; assigned to Henry Coode, 8, Guildford Street, Russell Square.
Gadsby, John	Daniel Welch, Derby; assigned to William Stevens, 6, Queen Street, Cheapside.

<i>Clerk's Name.</i>	<i>Name and Residence of attorney to whom articulated, assigned, &c.</i>
Gall, James Charles	William Brooke, Kenninghall, co. Norfolk; ass ^d to Wm. Ransom, Stowmarket; and to Dan. Calver, Kenninghall.
Geldard, Christopher John	William Robinson, Settle.
Gell, Alfred	Francis Harding Gell, Lewes.
Good, John Wiltshire	George Austie, Devizes; assigned to Edward Francis Fennell, 32, Bedford Row.
Goodman, Hiller	Henry Gilbert, Southampton; assigned to John Barney, Southampton.
Gordon, William	Alexander Gordon, 57, Old Broad Street.
Grant, Charles William	John Hartley, Settle.
Griffith, Griffith	David Griffith, Carmarthen.
Grigson, Edward Robert	Edward Harvey Grigson, Walton, co. Norfolk; assigned to Charles Goodwin, King's Lynn, Norfolk.
Gutteres, George	Thomas Webb Gilbert, 1, Brabant Court, Philpot Lane.
Gwynne, John	Thomas Binns, Elvetham, and 17, Essex Street.
Harbin, Peter Tait	William Waller, 12, Clements' Inn.
Hawkyard, George	James Mellor, Ashton-under-Lyne.
Hazel, Edward Wells	George Parsons Hester, Oxford.
Henning, Thomas Parr	William Price Pinchard, Taunton.
Hill, Richard	William Graham, Abingdon.
Hinton, Frederick	James Pullin Hinton, Bristol.
Hodgson, John	Matthew Gaunt, Leeds; Thomas Lechemere Marriot, Manchester.
Hook, St. Pierre Butler	Sir George Stephen, Knt., 17, King's Arms Yard.
Hulton, Fred. Blethyn Copley	Charles Buck, Preston.
Ilderton, Henry Decimus	George Lecke Baker, 52, Lincoln's Inn Fields.
Inglis, James	William Mason, Colchester.
Jenkins, George Thomas	Thomas William Budd, Bedford Row.
Johnson, William Henry	William Braikewridge, 16, Bartlett's Buildings.
Johnston, George	Joseph Heapy Watson, 19, King's Arms Yard.
Jones, John William	Benjamin Worteman, Evesham, county Worcester.
Jones, Daniel Price	Daniel Price, Talby, county Carmarthen.
Kemp, George Baring	Joseph Maynard, 3, Mansion House Place; assigned to Frederick Lewis Austen, 6, Ely Place, Holborn.
Law, James Charles	Daniel Godfrey, Abingdon, Berks.
Lavers, William, the younger	Thomas Phillips, Plymouth.
Lewis, Edward	James Blackledge, Brackenbury, Manchester.
Long, John	Thomas Jones, the younger, Millman Place, Bedford Row.
Maister, John	James Russell, York.
Mathews, Richard Gardner	Alexander Mitchell, 4, New London Street; assigned to Henry Hill, New London Street.
Matterson, John Key	John Blanchard, York.
Matthews, Richard	Edward Twopeny, Rochester, Kent.
Michell, Charles Clement	Edward Michell, Shepton Mallett.
Mitford, Edward Reveley	John Adams Tilleard, 34, Old Jewry.
Morgan, Thomas Henry	Richard Helps, Gloucester.
Niblett, Charles William	Charles Niblett, Farnham; assigned to John Rand, Guildford, and Farnham.
Nicholl, Frederick Iltid. (B. A.)	Robert Wheatley Lumley, Carey Street.
Norris, Jas. Edw. the younger	James Edward Norris, Halifax.
Norton, William Hebelor	William James Norton, New Street, Bishopsgate.
Pallet, James	John Wilkes Unett, and John Unett, Birmingham.
Paterson, Robert	George Marshall, Berwick-upon-Tweed.
Perkins, Thomas	John Lampray, Warwick.
Poole, Francis	Richard Barnes, Barnard Castle.
Protheroe, Thomas	John Hill, 56, Welbeck Street, Cavendish Square.
Pullen, James Thomas	Robert Byron Chambers, Austin Friars, Old Broad Street.
Reed, Thomas Lancelot	Sturley Nunn, Ixworth; assigned to Henry Manisty, 3, King's Road, Bedford Row.
Rodgers, Charles	William Foster, New Sleaford.
Rowley, Thomas Butler Welch	Thomas Lamb, Lancaster.
Rush, John Brook	John Roger Rush, 18, Austin Friars.
Scaife, John the younger	George Tallentire Gibson, Newcastle-upon-Tyne.
Scobell, Edward Henry	Henry Arthur Harvie, Bideford.
Serjeant, Robert	Richard Symons and Edward Luxmoore, Wadebridge.
Shelton, George Lane	William Deveroux, Bromyard.
Shepherd, William Luke	John Uppleby, Scarborough.
Shipman, Robert Milligan	Joseph Munn, Tenterden.

<i>Clerk's Name.</i>	<i>Name and residence of Attorney to whom articulated, assigned &c</i>
Sloper, John William	Joseph Maynard, 3, Mansion House Place.
Smith, Joseph Crowther	Samuel Smith, Walsall.
Smith, Arthur	John Smith, Crediton, Devon; assigned to John Cleave, Bridge Street, Hereford.
Snaith, George	Peter Tuxford, Boston; assigned to Buxton Kenrick, and Henry Harwood, Boston.
Staley, Alfred	William Aldridge, Stroud.
Stamp, George	George Marris, Caistor.
Standbridge, Thomas	John Richards, Birmingham; assigned to James Motteram, Birmingham; re-articled to James Motteram.
Stokes, Charles	Thomas Andrew, Great Coggleshall, Chester; assigned to Samuel Waylen, Great Coggleshall.
Stone, George	William Bartley, 9, Temple Court, Liverpool; assigned to John Hawkinson Kenyon, 16, Castle Street, Liverpool.
Sykes, William	James Wadsworth, Eddercliffe, township of Liversedge
Symons, William	Edward Hoblyn Pedler, Liskeard.
Sweet, Henry	Northmore Herle Pierce Lawrence, Launceston.
Tepper, Jabez	Josiah Isles Wathen, 3, Bedford Row.
Thompson, William	Joseph Thompson, Workington; assigned to Edward Scott, Wigan.
Thorne, John Chorley	John Michell, the younger, Redruth, Cornwall.
Torr, John Smale	John Smale, Exeter.
Torre, John Alexander	Edward Knockner, Dover; assigned to George Washington Abbott, 9, Saint James's Street
Traviss, John	William Shepherd, Barnsley, Yorkshire.
Veal, Charles Marfed Barron	Questor Veal, Great Grimsby.
Verrall, Henry	John Tribe, Steyning, Sussex; assigned to Robert Upperton, Brighton.
Veysey, Arthur	Robert Upperton, Brighton.
Wace, George	Richard Wace, Shrewsbury.
Wade, Charles Joseph	Thomas Wood, formerly of Wolverhampton, but now of London; assigned to Thos Holme Bower, 46, Chancery Lane.
Walker, Willoughby Newton	Edward Harrison, 14, Southampton Buildings.
Wasbrough, Henry Sidney	John Bligh Stanley, 11, Corn Street, Bristol; assigned to John Aubrey Whitcombe, Gloucester; re-assigned to John Bligh Stanley.
Watson, Jacob	Edmund Kent, the younger, Fakenham.
Watts, John King	Thomas Escoline Fisher, St. Ives.
Webb, Edward John	Joseph Allen Higgins, Ledbury.
Welch, William Lister	Richard Claye, Manchester.
Weyman, Thomas	William Downes, Ludlow; assigned to James Cross, 9, Staple Inn.
Wheelwright, Charles	Arthur Ryland, Birmingham.
Whittenbury, John Llewellyn	Sir John Bickerston Williams, Knt., Shrewsbury.
Wilby, John	George Robinson, Wakefield; assigned to Thomas Taylor, Wakefield.
Wilson, John (B. A.)	Charles Harrison Clarke, and Henry Wells, Nottingham.
Wintle, James	Richard Helps, Gloucester; assigned to Charles Medredith, Lincoln's Inn.
Wormald, William	Timothy Beaver, Wakefield; assigned to Joseph Phillips, Chippenham.
Wright, Robert	Robert Fenton, Newcastle-under-Lyme, (deceased); assigned to Robert Fenton, Newcastle-under-Lyme.
Wright, Charles	Edward Sewell, Swaffham.
Yarington, William Samuel	Samuel Sadler, North Walsham, Norfolk; assigned to William Yarington, Swaffham.
Yates, William	John Atkinson, Liverpool; assigned to Richard Finlow, Liverpool; re-assigned to John Johnson Brown, Liverpool.

The above were examined at *Common Law*; the following in *Chancery*.

Cooper, Charles Henry William Jeary Cannon, Cambridge.

BARRISTER'S CALLED.

Trinity Term, 1840.

LINCOLN'S INN.

Richard Brome Debary.
Richard Henegan Lawrie.
Daniel Robertson.
John Stedman.
Henry Barry.
Hon. Geo. Frederick Brabazon Ponsonby.

INNER TEMPLE.

Edward Christopher Egerton.
Richard James Corner.
George Henry Marsh.
George Atkinson.
James Shaw Willes.
Florance John Benson.
George Carr Peirson.
Richard Charnock.
Charles Spencer March Phillips.
William Dougal Christie.
Paitfield Mills.

MIDDLE TEMPLE.

George John Lloyd.
William Irving Smith Clark.
John Hurrell.
John Richardson Fryer.
James Curtis Somerville.
Thomas Leach.
Samuel Comyn.
Harcourt Mooney.
William Henry Spicer.
Henry Samuel Chapman.
Frederick Philipse Morris.
Henry Mark Lynch.
Joseph Turnley.

GRAY'S INN.

Nathaniel Griffin.
Chandler Allen.
Samuel Manning.

MISCELLANEA.

LORD KENYON.—"He was once examined respecting the emoluments of his office, before a committee of the House of Commons, over which Mr. Abbot, who then held a subordinate post in the King's Bench, presided. Lord Kenyon declining to reply to some question put to him, the chairman, with characteristic pomposity, informed him that he was armed with the authority of the commons house of parliament. 'Sir,' replied the irascible Chief Justice, 'I have not come here to be yelped at by a turnspit!'"

LORD BROUGHAM.—"It has been related of him, that once, at the Lent assizes at York, he sat for some time intently looking at a witness who was giving evidence, and whom he was to cross-examine. At last the poor fellow, after several efforts to continue his replies, became so dreadfully alarmed, that he declared that "he could not say another word, unless that gentleman," pointing to Mr. Brougham, "would take his eyes off him."—*Law and Lawyers.*

MASTERS EXTRAORDINARY IN CHANCERY.

From 26th May to 19th June, 1840, both inclusive, with dates when gasetted.

Douglas, Charles, Witham, Essex. June 12.
Gill, William Coleman, Bath. June 2.
Harvey, Thomas, Egham, Surrey. May 26.
Woodburne, Thomas, Thirston Ville, Milnthorpe, Lancaster. June 5.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 26th May to 19th June, 1840, both inclusive, with dates when gasetted.

Wright, John, and James Wilson, South Shields, Durham, Solicitors. June 5.

BANKRUPTCIES SUPERSEDED.

From 26th May to 19th June, 1840, both inclusive, with dates when gasetted.

Beastall, William, Nottingham, Draper. June 19.
Case, Matthew, and William Hodgson, Manchester, Commission Agents. June 19.
Green, Joseph, Ipswich, Linen Draper. June 9.
Harper, Joseph, Rotherhithe, Surrey, Shipwright, Barge Builder, Joiner and Blacksmith. June 2 & 5.
Meads, Moses, and John Meads, Woodbridge, Nottingham, Hosiers and Bakers. May 29.
Prat, Richard Perian, Glastonbury and Wells, Somerset, Scrivener. May 26.
Prat, Samuel, Glastonbury and Wells, Somerset, Scrivener. May 26.
Walker, Richard, Abertelery, near Pontypool, Monmouth, Ironmaster. May 29.
Young, Richard, Love Lane, Wandsworth, Surrey, Builder. May 29.

BANKRUPTS.

From 26th May to 19th June, 1840, both inclusive, with dates when gasetted.

Austin, Thomas, Armley, York, Cloth Manufacturer. *Wiglesworth & Co.*, Gray's Inn; *Richardson & Co.*, Leeds. June 5.
Andrews, William, Birmingham, Cabinet Maker and Upholsterer. *Chilton & Co.*, Chancery Lane; *Suckling*, Birmingham. June 9.
Alletson, Thomas, and Thomas Frankland, Liverpool, Oil Merchants and Drysalts. *Taylor & Co.*, Bedford Row; *Lownes & Co.*, Liverpool. June 12.
Atkinson, Thomas, late of Marton House, near Northwich, Cheshire, Salt Manufacturer, and now or late of Cheverton House, near Truro, Cornwall, Mining Agent. *Cuff & Co.*, Half-Moon Street, Piccadilly; *Barker*, Middlewich. June 19.
Austen, Nathaniel Author, Ramsgate, Kent, Banker. *Dyson*, Chancery Lane; *Mercer*, or *Snowden & Co.*, Ramsgate. May 26.
Baxter, Robert, Montague Close, Southwark, Surrey, Wharfinger; and late of Tottenham, Middlesex, Farmer. *Jackson*, Off. Ass.; *Watson*, Worship Street, Finsbury. May 26.
Brook, Joseph, Victoria Road, Pimlico, Middlesex, Corn Dealer and Pork Butcher. *Green*, Off. Ass.; *Tribe*, Lincoln's Inn Fields. May 26.
Beeston, William Hirst, Manchester, Coach Builder. *Edge & Co.*, Manchester. May 26.
Brook, Joseph, Huddersfield, York, Cloth Dresser

- and Merchant. *Van Sandau & Co.*, Old Jewry; *Brooks & Co.*, Huddersfield. May 26.
- Booth, Samuel Bradley, Macclesfield, Chester, Silk Merchant. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Wormald*, Macclesfield. May 26.
- Brown, John, Sheffield, York, Chemist and Druggist, and Oil and Colourman. *James*, Basinghall Street; *Jervis*, Sheffield. May 29.
- Baron, Henry, Balderston, Lancaster, Cotton Manufacturer. *Chester*, Staple Inn; *Armstrong*, Preston. May 29.
- Brown, Barnard, and Charles Poppleton, Leeds, York, Flax Spinners. *Battye & Co.*, Chancery Lane; *Raynor & Co.*, Leeds. May 29.
- Brown, James, Birmingham, Ironmaster and Manufacturer. *Austen & Co.*, Gray's Inn; *Arnold & Co.*, Birmingham; *Palmer & Co.*, Birmingham. May 29.
- Barnes, Philip, Jamaica Street, Commercial Road East, Middlesex, and of the City of Norwich, Coal and Lime Merchant, Bricklayer, Builder, and Surveyor. *Graham*, Off. Ass.; *Seaman*, Pancras Lane. June 2.
- Bennett, Robert South, Cheltenham, Gloucester, Corn Merchant. *Bubb & Co.*, Cheltenham; *Roy & Co.*, Lothbury. June 9.
- Burrows, William, Leicester Street, Leicester Square, Plumber, Glazier, and Painter. *Belcher*, Off. Ass.; *Gough*, Leicester Street. June 12.
- Brown, William, Manchester, Stuff Manufacturer and Merchant. *Lawrence & Co.*, Old Fish Street, Doctors' Commons; *Norris & Co.*, Bradford. June 12.
- Bateman, John, Cirencester, Gloucester, Blacksmith. *Allen*, Bedford Row; *Newmarch*, Cirencester. June 19.
- Balshaw, Richard, Bolton-le-Moors, Lancaster, Factor. *Milne & Co.*, Temple; *Knowles*, Bolton-le-Moors. June 19.
- Campbell, Colin, New City Chambers, Bishopsgate Street, London, Ship Owner and Merchant. *Gibson*, Off. Ass.; *Tucker*, Bank Chambers, Lothbury. June 2.
- Carr, James, Low Southwick, and of Monkwearmouth Shore, Durham, Ship Builder. *Swain & Co.*, Frederick's Place, Old Jewry; Messrs. *Wright*, Sunderland. June 5.
- Cove, Luke Hinde, Coal Exchange, London, and Western Wharf, Adelphi, Coal Merchant. *Groom*, Off. Ass.; *Murray*, London Street, Fenchurch Street. June 19.
- Elfsick, Edward, Milton next Sittingbourne, Kent, Grocer and Draper. *Green*, Off. Ass.; *Shepherd*, Faversham; *Egan & Co.*, Essex Street, Strand. June 2.
- Earle, William, Castle Street, Long Acree, Black Coach Master and Hackneyman. *Groom*, Off. Ass.; *Thorndike*, Staple Inn. June 9.
- Evans, Robert Harding, Pall Mall, Bookseller and Auctioneer. *Alaager*, Off. Ass.; *Walter & Co.*, Symond's Inn. June 12.
- Fitkin, Thomas, jun., Turnham Green, Omnibus Proprietor and Hackneyman. *Lackington*, Off. Ass.; *Wentner*, Ely Place. May 26.
- Freeth, Job, Birmingham, Ironmonger. *Capes & Co.*, Bedford Row. *Sargent*, Smithfield; *Marsball*, Birmingham. June 5.
- Greenwood, William, Henry Greenwood, and John Smith Greenwood, Calverley Mills, York, Cloth Manufacturers, Worsted Spinners, and Corn Millers. *Fidley*, Serjeant's Inn, Fleet Street; *Barr & Co.*, Leeds. May 29.
- Grundy, Isaac, Preston, Woollen Draper and Upholsterer. *Milne & Co.*, Temple; *Winder*, Preston, or *Grundy*, Bury. June 2.
- Gye, Frederick, Fleet Street, London, Tea Dealer and Wine Merchant. *Alaager*, Off. Ass.; *Murray*, London Street, Fenchurch Street. May 26 & 29.
- Gye, Frederick, and Richard Hughes, Fleet Street, London, Tea Dealers and Wine Merchants. *Alaager*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. June 9.
- Gower, John Lewis, Tenby, Pembroke, Surgeon and Apothecary. *Lock*, Pembroke; *Norris & Co.*, Bartlett's Buildings. June 9.
- Heatherley, Thomas, Wolverhampton, Stafford, Miller and Baker. *White & Co.*, Bedford Row; *Smith*, Walsall. May 26.
- Hubbard, John Peters, Teignmouth, Devon, Cabinet Maker and Upholsterer. *Hill*, Copt-hall Court; *Toser*, Teignmouth. May 26.
- Hughes, Richard, late of Fleet Street, London, now of Vauxhall, Surrey, Tea Dealer and Wine Merchant. *Alaager*, Off. Ass.; *Murray*, New London Street. May 29.
- Hutchinson, George, Sheffield, York, Corn Merchant. *Hicks & Co.*, Gray's Inn Square; *Vickers*, Sheffield, or *Holden*, Hull. June 2.
- Halsall, Thomas, Liverpool, Coal Merchant. *Adlington & Co.*, Bedford Row; *Gaskell*, Wigan. June 9.
- Hartshorne, George, Oldswinford, Worcester, and Whittington, Stafford; and Benedict Neale, of Wallheath, Kingswinford, Stafford, and also of Whittington, Iron Manufacturers. *Cloves & Co.*, King's Bench Walk; *Collis*, Stourbridge. June 19.
- Holcroft, William, Bolton-le-Moors, Lancaster, Bookseller and Stationer. *Milne & Co.*, Temple; *Briggs*, Bolton-le-Moors. June 19.
- Holdforth, Charles Gordon, and John Bald, Liverpool, Commission Merchants. *Littledale & Co.*, Liverpool; *Adlington & Co.*, Bedford Row. June 19.
- Kirkbride, Thomas Warcup, Nantwich, Chester, Shareholder in the Imperial Bank of England, and Brewer. *Vincent & Co.*, King's Bench Walk, Temple; *Harper & Co.*, Whitechurch.
- Lees, Ralph, Burslem, Stafford, Grocer and Earthenware Manufacturer. *Wolston*, Farnival's Inn; Messrs. *Ward*, Burslem. May 26.
- Lawson, Gilbert Armstrong, Oxford Street, Carpet and Furniture Warehouseman. *Graham*, Off. Ass.; *Dangerfield*, Suffolk Street, Pall Mall. June 9.
- Lees, Job, Manchester, Dealer. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. June 9.
- Matthews, Silas, West Cowes, Isle of Wight, Southampton, Grocer, Linen Draper, and Brewer. *Lee*, Winchester; *Butt*, Ryde, Isle of Wight; *Rogerson*, Norfolk Street, Strand. May 26.
- M'Lean, Charles Poland Street, Oxford Street, Upholsterer, and Cabinet Maker. *Gibson*, Off. Ass.; *Kinsey*, Suffolk Street, Pall Mall. June 2.
- Morgan, Thomas, Lantrisant, Glamorgan, Victualler and Innkeeper. *Perkins & Co.*, Merthyr Tidvil; *Gregory & Co.*, Clement's Inn. June 2.
- Masters, Stephen, Newport, Monmouth, Ironmonger. *Cokmore & Co.*, Birmingham; *Clarke & Co.*, Lincoln's Inn Fields. June 2.
- Moffit, Thomas, John Carter, and Thomas Halsall, Liverpool, Marble Masons. *Bridger*, Finsbury Circus; *Francis & Co.*, Liverpool. June 5.
- M'Cheane, William, and Charles Bartlett, Glou-

- cester, Merchants. Messrs. *Wilton*, Gloucester; *Wilton*, Gray's Inn. June 9.
- Monks, Samuel, and James Monks, Bolton-le-Moors, Lancaster, Ironfounders. *Perkins*, Gray's Inn Sq.; *Parry*, Manchester. June 12.
- Mayer, Samuel, Joseph Mawdaley, Ralph Lees, and Jesse Bridgwood, Burslem and Tunstall, Stafford, Earthenware Manufacturers. *Wilson*, Symond's Inn, Chancery Lane; *Harding*, Burslem. June 12.
- Mumford, Mary, Coppice Row, Clerkenwell, Victualler. *Cassan*, Off. Ass.; *Dimmock*, Size Lane, Bucklersbury. June 19.
- Mullings, Francis, Birmingham, Pearl Ornament Manufacturer. *Church*, Great James Street, Bedford Row; *James*, Birmingham. June 19.
- Ouchterlong, Thomas, late of the Baltic Coffee House, Threadneedle Street, but now of Broad Street, London, Merchant. *Gibson*, Off. Ass.; *Knowland & Co.*, White Lion Court. June 19.
- Park, James, Manchester, Iron Merchant. *Hall*, Manchester; *Heald*, Austin Friars. May 26.
- Price, Sidney, Blackburn, Lancaster, Machine Maker. *Wilson*, Southampton Street, Bloomsbury; *Hargreaves*, Blackburn. May 29.
- Patrick, Edmund, Gloucester, Dealer in Salt and General Merchant and Agent to the Commercial Inland Carrying and Steam Navigation Company. *Mayer*, Gloucester; *White & Co.*, Bedford Row. June 2.
- Phipp, Thomas, Southampton Row, Bloomsbury, Bookseller and Stationer. *Belcher*, Off. Ass.; *Pain & Co.*, Great Marlborough Street. June 5.
- Pankhurst, Henry Francis, Stoke-upon-Trent, Stafford, Grocer and Tea Dealer. *Dutton*, Hanley; *King*, Furnival's Inn. June 12.
- Reynolds, William, Droitwich, Worcester, Baker and Malterer. *Becke & Co.*, Lincoln's Inn Fields; *France*, Worcester. May 26.
- Richardson, George, Southampton, Builder. *Plucknett & Co.*, Lincoln's Inn Fields; *Mackey*, Southampton. May 26.
- Richardson, John, Leeds, York, Woollen Merchant. *Makinson & Co.*, Temple; *Foden*, Leeds. May 26.
- Rofe, Charles, Great Yarmouth, Norfolk, Innkeeper. *White & Co.*, Lincoln's Inn Fields; *Worship & Co.*, Great Yarmouth. May 29.
- Redfearn, James, Meltham, Almondbury, York, Woollen Cloth Manufacturer and Scribbling Miller. *Battye & Co.*, Chancery Lane; *Fenton & Co.*, Huddersfield. May 29.
- Rimmer, Jane, Lytham, Lancaster, Innkeeper. *Walmesley & Co.*, Chancery Lane; *Bray*, Preston. June 5.
- Rich, Charles, Brighton, Sussex, Innkeeper. *Edwards*, Off. Ass.; Messrs. *Baddeley*, Leman Street, Goodman's Fields. June 9.
- Rider, David, Leeds, York, Cloth Merchant. *Battye & Co.*, Chancery Lane; *Fiddley*, Serjeant's Inn, Fleet Street; *Barr & Co.*, or *Naylor*, Leeds. June 19.
- Reed, Thomas, Sunderland, Durham, Ship Builder and Canvass Manufacturer. *Burns*, Sunderland; *Compton*, Church Court, Old Jewry. June 19.
- Spencer, Benjamin, Nottingham, Baker and Flour Seller. *Percy & Co.*, Nottingham; *Austen & Co.*, Gray's Inn. June 2.
- Stalsall, Thomas, Liverpool, Coal Merchant. *Adington & Co.*, Bedford Row; *Gaskell*, Wigan. June 2.
- Smallfield, George, Newgate Street, London, Printer. *Turguand*, Off. Ass.; *Fry & Co.*, Cheapside. June 5.
- Stillington, John, Epworth, Lincoln, Butcher. *Scott & Co.*, Lincoln's Inn Fields; *Dawson*, Epworth. June 5.
- Scott, Henry, Sunderland, Durham, Draper. *Ashurst & Co.*, Cheepside; *Smart*, Sunderland. June 5.
- Steele, Thomas, Congleton, Cheshire, Banker. *James & Co.*, Old Jewry; *Pickford*, Congleton. June 12.
- Suffell, Henry, Regent Street, Hosier and Fancy Warehouseman. *Abbott*, Off. Ass.; *Soames*, Winchester Street, Broad Street. June 19.
- Thompson, Edward, Cambridge, Carver and Gilder. *de Beckett & Co.*, Golden Square; *Hunt*, Cambridge. May 29.
- Topham, Edward, Manchester, Woollen Merchant and Draper. *Mitchell & Co.*, New London Street; *Upton*, Manchester. June 19.
- Throssell, William, Bridgewater, Somerset, Saddler and Harness Maker. *Paramore & Co.*, Bridgewater; *Rosser*, New Bowell Court. June 19.
- Tattersall, Thomas, Liverpool, Corn Merchant. *Vincent & Co.*, Temple; *Booth*, Liverpool. June 19.
- Tovey, Thomas, Warminster, Wilts, Innkeeper. *Chapman*, Warminster; *Holme & Co.*, New Inn. May 26.
- Vickers, William, Holywell, Flint, Nurseryman and Seedsman. *Bolton & Co.*; Austin Friars; *Pendre*, Holywell. June 5.
- Wheeler, John, Princes Street, Hanover Square, Tailor and Lodging-house Keeper. *Cassan*, Off. Ass.; *Cook & Co.*, New Inn. May 29.
- Womack, George, Leeds, York, Cloth Merchant. *Wilson*, Southampton Street, Bloomsbury Square; *Payne & Co.*, Leeds. May 29.
- Webster, Henry, Bedford Street, Covent Garden, Manufacturer of Lamps. *Cassan*, Off. Ass.; *Few & Co.*, Henrietta Street, Covent Garden. June 2.
- Williams, Francis, Bristol, Ship and Boat Builder. *Clarke & Co.*, Lincoln's Inn Fields; *Smith*, Bristol. June 2.
- Whalley, William, Leeds, York, Wool Merchant. *Makinson & Co.*, Temple; *Foden*, Leeds. June 5.
- Woodward, William, Birmingham, Tailor. *Stafford*, Buckingham Street, Strand. June 5.
- Watts, George, and William Anglis, Seething Lane, Great Tower Street, London, Wine Merchant. *Clark*, Off. Ass.; *Hill*, Mark Lane. June 9.
- Wegg, George, Ipswich, Suffolk, Draper. *Litchfield & Co.*, Chancery Lane; *Pownall*, Ipswich. June 12.

PRICES OF STOCKS.

Tuesday, 23d June, 1840.

Bank Stock, div. 7 per Cent.	-----	175½
3 per Cent. Reduced	-----	91½ a ¼ a ½
3½ per Cent. Reduced Annuities	-----	99½ a ¼
Long Annuities exp. 5th Jan. 1860	-----	13½ a ¼ a ½
India Bonds, 3 per Cent.	-----	3s. pm.
3 per Cent. Consols for opening 16th July	-----	91½ ex. div.
Exchequer Bills, 1000l. at 2½d.	-----	25s. a 23s. pm.
Ditto 500l. at 2½d.	-----	25s. a 23s. pm.
Ditto Small	-----	25s. a 23s. pm.

The Legal Observer.

SATURDAY, JULY 4, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF JOINT STOCK COMPANIES.—No. V.

ACTIONS AND SUITS BY AND AGAINST THEM.

We shall now endeavour to collect the principal cases relating to actions and suits by and against joint-stock companies, and in this and in other portions of the subject, we shall see that the opinions of the Judges with respect to these undertakings have of late considerably altered. A very few years ago all dealings with joint-stock companies were discountenanced, but the present feeling of the Courts is to support all transactions of a *bond fide* character, and to see that justice is done, without paying regard to mere formal and technical objections; and this, considering the large amount of capital embarked in them, and the many useful undertakings which they originate and frequently accomplish, is only just and reasonable. If these companies are to be considered as mere traps for the unwary, set on foot for the purpose of raising transferable shares and other stock-jobbing purposes, it is highly proper that they should be discouraged, but if established for a real and proper object, which is fairly pursued and endeavoured to be carried out in the best manner that circumstances will permit, we apprehend that in such cases the transactions of the company will be favourably considered, and its dealings protected both by Courts of Law and Equity, and they will remove, if they can, the difficulties which may embarrass their operations.

This distinction is fully recognised. When the project is a bubble, a bill in equity may be maintained against the directors to recover a deposit paid by a share-

holder,^a especially where there is fraud on the part of the directors.^b So if a company be projected, but never comes into actual operation, a person who had advanced his money upon the faith of the completion and continuance of the project is entitled to recover his deposit in an action against the director for money had and received to his use, without any deduction for expenses incurred;^c and where the holder of shares in a projected railroad company sold them, and the undertaking was abandoned before any thing was done in pursuance of the project, it was held that the purchaser might recover the amount of the shares in an action against the vendor.^d

Where the company has obtained a charter, letters patent, or an Act of Parliament, enabling it by means of some of its officers to sue and be sued, of course most of the difficulties affecting this subject are removed: still many questions have arisen on the construction of these acts. We shall notice some of these, and, first, as to actions by companies.

Where an Act of Parliament, after reciting that difficulties had arisen and might arise, as well in bringing and maintaining actions and suits for recovering debts and enforcing obligations due to the society, and in prosecuting persons who might steal or embezzle any money, goods, or effects belonging to the society, (an insurance company) by reason of its being required by law that all the several subscribers should sue and pro-

^a *Green v. Barrett*, 1 Sim. 45.

^b *Colt v. Woollaston*, 2 P. Wms. 154; *Green v. Barrett*, *ubi sup.*; *Blain v. Agar*, *post*, p. 179.

^c *Nochles v. Crosby*, 3 B & C. 814.

^d *Kempson v. Sanders*, 12 Moo. 44, 4 Bing. 5.

secute by their several names, it was enacted, that all actions and suits commenced or instituted by or on behalf of the society for recovering any debts or enforcing any claims should be commenced or prosecuted in the name of the chairman or secretary of the said society, as the nominal plaintiff, and it was held that the chairman was empowered to sue on behalf of the company to recover damages for a libel reflecting upon the trading character of the company.^e Where the act gives the trustees power to sue "by action of debt or on the case" assumption will lie.^f Where a banking company sues by its public officer, pursuant to stat. 7 Geo. 4, c. 46, it must be shewn, that he is so described in the return made to the Stamp Office, and a certified copy must be produced; but the right of such company to sue, is not defeated if it appear that in such return the places of abode of one or more partners are omitted, there being no evidence that the return varies in this respect from the company's books.^g

Next as to actions against companies enabled to sue and be sued.

By stat. 5 Geo. 4, c. 160, s. 1, all actions against the St. Patrick Assurance Company, are to be prosecuted against the secretary for the time being, or against any member of the company, as the nominal defendant; and by s. 4, execution upon any judgment in such action may be issued against any member of the company; and by s. 6, if such execution shall be ineffectual, the party having obtained judgment may issue execution against any person who was a member when the contract was entered into, with the leave of the Court; and it was held that a party who had brought an action and obtained judgment against the secretary, could not lawfully issue execution against another member of the company, without having previously by leave of the Court suggested on the record, facts to shew that the party against whom he so issued execution was liable as a member of the company.^h Where an act directs that actions in respect of claims upon the company shall be brought against the treasurer, but that his effects shall not be taken in execution, the

directors and other members of the company will be compelled by mandamus to pay the money recovered in such action.ⁱ

In all actions against companies of this nature, it will be necessary to shew that the terms prescribed by the act constituting it, on which the claim is founded have been strictly pursued.^k And where an act of parliament authorized all suits on behalf of the company against any person to be commenced in the name of the chairman, and in all proceedings in which it would have been necessary to state the name of the partners, it was made sufficient to state the name of the chairman only; it was held that the act did not authorize suits to be commenced by the chairman against one of the partners without making the others parties.^l

But where there is no act of parliament, charter, or letters patent, great difficulty has occurred in suits by the members of these companies, by reason of the well-known rule of a Court of Equity—that all parties interested in the matter in dispute must be brought before the Court.

It is quite clear that where there is a common interest in all the shareholders of the company, a suit in support of that interest may be instituted by one or some of them on behalf of the others,^m and that this common interest will, in certain cases, be implied.ⁿ

But in suits where the shareholders of the company claimed different or hostile interests, the rule has been frequently laid down differently:^o Lord Eldon repeatedly declined in such cases to give relief, unless all the parties were before the Court. In the case of the Norwich Union Insurance Office,^p which was a suit by shareholders against directors, although there were 60,000 partners, he adhered to this rule, and refused to give relief. In the case of the Alliance Insurance Company,^q where a bill was filed by one shareholder on behalf of himself and all other shareholders, against

^e *Williams v. Beaumont*, 10 Bing. 260, 3 Moore & Scott, 705.

^f *Corbett v. Carpmael*, 2 Nev. & M. 834.

^g *Armitage v. Hamer*, 3 B. & Ad. 793.

^h *Bartlett v. Penland*, 1 B. & Ad. 704. See also *Wormwall v. Hailstone*, 1 Bing. 668; *Harrison v. Timmins*, 4 Mee. & Wels. 510; 17, L. O. 466.

ⁱ *Rea v. St. Katharine's Dock Company*, 1 Nev. & M. 121; *Corpe v. Glyn*, 3 B. & Ad. 801.

^k *Sutcliffe v. Smith*, 3 B. & Ad. 999.

^l *Mucmahon v. Upton*, 2 Sim. 473; and see *Hickens v. Congreve*, 4 Russ. 562.

^m *Cockburn v. Thompson*, 16 Ves. 321; *Gray v. Chaplin*, 2 Sim. & Stu. 267; *Small v. Attwood*, You. 459; *Taylor v. Salmon*, 4 M. & C. 134. See the observations of Sir L. Shadwell, V. C., in *Long v. Younge*, 2 Sim. 363.

ⁿ *Gray v. Chaplin*, 16 Ves. 321.

^o *Davis v. Fish*, Farren on Life Ass. 128.

^p *Nattusich v. Irving*, Gow on Part. App.

the president and directors of the company, praying dissolution, his Lordship said—"The principle which a Court would act on in the case of a partnership of six, must be applied to a partnership of 600;" and declined to entertain the suit unless all parties were before the Court. And in many other cases¹ he acted on this opinion; and the rule so laid down was followed to a great extent by several other learned Judges.

In *Blain v. Agar*² a bill was filed by shareholders against directors, to recover deposits on the ground of fraud. The bill was on behalf of plaintiffs and other persons, who were subscribers together of 1690 shares in the company, such other persons having executed a deed, by which they assigned, upon certain conditions, their interest in the concern to the plaintiffs, and constituted them their attorneys. A demurrer was taken *ore tenus* that the persons who had so assigned their interests ought to have been made parties; and Sir John Leach, V. C., allowed the demurrer, but afterwards, the bill being amended, it being stated that the plaintiffs did not know the names of the other subscribers, the demurrer for want of parties was overruled, the bill stating a case of fraud.

The present Master of the Rolls, Lord Langdale, has also acted on this doctrine of Lord Eldon. In a suit instituted for the purpose of having the affairs of a dissolved joint-stock company settled, and praying for accounts of the partnership transactions, and that a sale of the partnership property by the directors might be declared void, it was held that all the members of the company, however numerous, must be made parties to the suit.³

But the most eminent modern Judges have held that there are cases in which they will not hold themselves bound by this technical objection. Thus, where some shareholders in a joint-stock company, sued on behalf of themselves and the other shareholders for the purpose of compelling the directors of the company to refund monies improperly withdrawn by them from the stock of the company, and applied to their own use, Lord Lyndhurst,⁴ C., overruled a demurrer on the ground that all the shareholders were not parties. His observa-

tions are so important that we shall cite a portion of his judgment:—"Here is a fund in which all the shareholders are interested; 15,000*l.* has been improperly taken out of it; a fraud has been committed on them all. Is it necessary that all should come into a Court of justice for the purpose of joining in a suit with a view to obtain redress? It is possible that the number of shareholders may be 6,000, for the capital of the company is fixed by the act of parliament⁵ at 300,000*l.*, divided into shares of 50*l.* each; and justice never could be obtained, if any very great number of plaintiffs were put on the record. It is said that there is nothing on the face of the bill which shews that the shareholders are so numerous that they could not all be joined as parties without inconvenience. I think it does appear sufficiently, that, if all were joined, the number of complainants would be inconveniently great; first, because the shares are 6,000 in number; and secondly, because it appears by the act of parliament that there were then upwards of 200 shareholders. It is clear, therefore, that justice would be unattainable, if all the shareholders were required to be parties to the suit. It is said, each shareholder might file a bill to recover his proportion of the money. Such a course would produce enormous inconvenience. Are 200 bills to be filed in order to do justice in this matter? If justice can be done in one suit, the Court will sustain such a proceeding, for to require all the shareholders to be parties, or to leave each shareholder to file a separate bill to redress his own wrong, would in substance be a denial of justice."

So also in the case of *Mare v. Malachi*,⁶ a bill was filed by a person who claimed a certain definite interest in a mine and mining adventure, as one of a number of co-partners, stating that the defendants, who were the legal owners of the mine, and also co-partners in the adventure, had sold the mine to a joint-stock company; and a demurrer to the bill that the other co-partners in the original adventure, and the shareholders of the joint-stock company, were not made parties, was overruled by Lord Cottenham, C., who said, "it is very desirable not to be too strict in cases like the present, which are becoming more and more common every day." And in the subse-

¹ *Van Sandau v. Moore*, 1 Russ. 441; *Carter v. Drury*, 1 Ves. & Bea. 154; *Jones v. Garcia del Rio*, Turn. & Russ. 297.

² 1 Sim. 37; 2 Sim. 289.

³ *Evans v. Stokes*, 1 Keen, 39. See the judgment fully given, 12 L. O. 508.

⁴ *Hichens v. Congreve*, 4 Russ. 562.

⁵ It is to be observed that there was an act of parliament in this case; but the judgment did not turn on this point, and the act was not held to apply.

⁶ 1 Myl. & C. 559.

quent case of *Taylor v. Salmon*,^w his Lordship referred to his former opinion in *Mare v. Malachi*, and observed that it was "the duty of the Court to adapt its practice as far as possible to the existing state of society, and to apply its jurisdiction to all those new cases, which, from the progress daily making in the affairs of men, must continually arise, and not, from too strict an adherence to forms and rules established under very different circumstances, decline to administer justice, and to enforce rights for which there is no other remedy."

His Lordship, however, has held that in a suit by a holder of shares, some original and some derivative, against the directors of an incorporated joint stock company, alleging a fraud, the bill must state the mode in which the plaintiff became a shareholder, the manner of his holding, and whether he performed the condition upon which, as far as the derivative shares were concerned, the transfer by the regulation of the company was permitted.*

At law, questions of this nature cannot so easily arise, as the same rule as to parties does not obtain. It is quite clear that a company may invest certain persons as directors with authority to sue for them, but it will be necessary at any trial to produce the deed to shew that such power is given to the directors.⁷

We shall here leave this division of the subject. It is our intention to open the various heads under which we shall hereafter range the cases as they occur. Our next head will be the power of directors with respect to making and enforcing the payment of calls.

CHANCERY REFORM.

THE AFFIDAVIT OFFICE.

IN pursuing that searching examination to which the whole of the offices of the Court of Chancery are now to be subjected, the Affidavit Office should not be entirely forgotten, although it is only fair to say that there is only one thing of which there is just reason to complain respecting it. This is the expecting office copies to be taken when they are not wanted. "This difficulty," says Mr. Field, "may perhaps arise from the circumstance that the junior clerk

derives emoluments from the copies,—a remnant of the whole system of fees, for the continuance of which there now appears to be no reason." By the return from the Clerk of the Affidavits, which has recently been made, the facts appear to be as follows:—

The amount of fees received from August 1833 to August 1834, was 3,368*l.*, and they gradually increased in each succeeding year, until in the year, August 1838 to August 1839, they amounted to 4,437*l.* The sum paid to the assistant clerk for copy money in the first year, was 633*l.*: in the last year 964*l.* The salary of the Chief Clerk is 500*l.*, that of the assistant clerk is 150*l.*, but then he has the copy-money, although this is subject to considerable disbursements for stationery, copying, &c., but he probably makes as much as the Chief Clerk. It is to be observed, that this office is open seven hours per day, except in the Long Vacation, when it is open from 11 to 1. This is all that can be expected, so far as attendance is concerned; and we have great pleasure in saying so.

EVIDENCE REGARDING THE BILL FOR APPOINTING NEW JUDGES IN CHANCERY.

THE Select Committee of the Lords on this bill, have, we believe, closed or nearly closed their labours; and from what we can gather, it would appear that they must have arrived at a conclusion which will be highly satisfactory to the profession. We hear it rumoured that they will accede to that part of the bill which proposes to establish two new Equity Judges, and to transfer the business and officers of the Equity Exchequer to the Court of Chancery.

The witnesses called in favour of the bill we understand to have been, the Vice Chancellor, Mr. Wigram, Mr. Kindersley, Mr. Koe, Mr. Sutton Sharpe, and Mr. Simpink, of the chancery bar; Mr. Baron Alderson; Mr. Field, solicitor; and Mr. Bowyer, the Clerk in Court of the Exchequer.

The Lord Chief Baron and Lord Brougham, who are understood to have been the chief opponents of the bill, have called Mr. Gatty, the clerk in court of the Exchequer. He is understood, however, not to be unfavorable to the principle of the bill.

We understand that beyond the facts bearing against the continuance of the Equity

^w 4 M. & C. 134, and see 19 L. O. 420. ■

^x *Wentburn v. Ingilby*, 1 Myl. & K. 61. ■

^y *Phelps v. Lyle*, 2 Fer. & Dav. 314.

Exchequer, which facts are so well understood as not to require alluding to, the evidence in favor of the bill was principally directed to shewing the frightful extent of forced compromise which takes place in adverse chancery suits, owing to the incompetency of the present establishment to decide much more than one-tenth part of the adverse business which comes before it. Lord Brougham's argument, used by him in the House of Lords, though at first sight a plausible one, on a slight examination will be seen to be very fallacious. He says that the number of bills filed annually, has for a long period of years been nearly the same, the number of causes set down annually, has not greatly differed, and that the arrears have also been nearly the same. Take away, therefore, he says, the arrear, and why should not the present two Judges be able to keep the Court straight?

The first answer, and the one which has always been given to this mode of putting the case is, that as soon as causes can be heard within a month or so from setting them down, there will immediately thereupon be a large influx of business into the Court. But, says Lord Brougham's line of argument—How do you shew this? Prove that there will be this increase. The matter, however convinced we may be of it, does not admit of positive evidence. It rests only in opinion. Solicitors can say, we know of numberless cases in which suitors are deterred from coming to the Court; but still the proof, after all is loose—it gives no measure of the increased judicial work which will be required to be done.

For the first time, as far as we are aware, a new and most important line of circumstances has been started by the Lord Chancellor, and supported, we have heard, by all the witnesses who have been examined on that part of his case. It is the enormous extent of compromise of rights to which the present suitors of the Court are, after they have come into the Court, imperatively compelled, by the inadequacy of the present judicial staff to decide their differences, has been, as we gather, chiefly relied on. We believe that from the facts which may be and probably have been proved, it is clear, that if only one-half the adverse cases which came last year into the Court, were to be left not compromised, that then, according to the present power of the Court, taking into account the present arrear, and assuming that there would be no compromise of causes in it, it must be twenty years before the first suitor of the year 1840, could get his cause

on; forty years before the first suitor of the year 1841, could get his cause on, and so on: that, in short, the court has only for a long period of years been able to keep under weigh at all, because nine-tenths of its suitors have by its delay and the needless expence which attaches to that delay, been constrained to submit to any compromise of their rights rather than endeavour to procure them under the gross disadvantages to which the present inadequate constitution of the equity machine compels them to submit.

The line of policy which would continue such a state of things as this, deserves strong language of reprobation. Why is this great country to be kept, as to the most important of its judicial functions (those relating to equity) in the state it was in, with reference to judicial force, three hundred years ago? While we are allowed fifteen judges to do our comparatively unimportant common law matters, why are we to be allowed two only for the great matters of equity? With all the increase of wealth and population of later years; with the infinite variety of equitable questions requiring immediate adjustment, are we to be gravely told by legislators that an establishment of judges, able to hear only 160 or 170 adverse causes a-year, is enough for the country? To say that the judges have been hearing only 160 or 170 causes a-year for many years past; and that the current of their work has been an even one, is but a mockery. Had there been fifty times as much judicial work requiring to be done, they could have done no more, for they have done all they could. To require us to remain in this state,—to say that no cause shall be decided sooner than it is now, is to legalise injustice, and to give to knaves the premium of impunity, except at a cost of delay (to say nothing of expence) which amounts in a vast preponderance of cases to absolute impunity.

The Legislature might much more wisely limit the number of producers of any other object of public desire. Suppose it were enacted that two tailors only (each of whom were able to make but one hundred and seventy coats a-year) should make all the coats which should be worn in England; it is very obvious that the bulk of the people must be without a coat on their backs, and be driven to all sorts of shifts to keep themselves warm; and yet meanwhile, there would be an even current of work for the two tailors; and we would venture to say the number of orders on the tailors' books, and

the number of coat-causes waiting to be heard, would be, year by year, the same. It might as well be asked, then, in the face of a shivering world, Prove to me, that if we once supply the present arrear of orders, there will be more orders than the two tailors can keep under in the future.

Begging pardon for the indecorum, if any, of the illustration, it may be safely said, that any argument of this sort carries absurdity on its very face: it can be used only in reference to the grave mysteries of the law.

To return to the subject-matter we were on, we trust that it may have been pointed out to the Select Committee how little it is to the benefit of the solicitors to allow matters to remain in this state. The mere interest on the early parts of their bills, in every adverse case in which they cannot from time to time get money paid on account, (and all adverse administrations are of this nature) will much more than eat up the entire profit in the bill. This is a fact well enough understood in the profession. In the course of a number or two, however, we propose to shew it further. Mean time may we request such of our readers as are engaged in Chancery practice to take one or two instances of their own, and to try the calculation upon them. We shall be very happy to communicate to the public any results with which they may favour us.

The progress of this measure renders the projected application to parliament respecting the removal of all the Courts to Lincoln's Inn Fields, a matter, if possible, of even more pressing and immediate interest.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

TITHE COMMUTATION AMENDMENT ACT.

[*Concluded from p. 148.*]

25. *Gardens or lawns of small extent may be exempted from rent-charge.*—And whereas in many cases tithe owners have, during the seven years of average prescribed by the said first-recited act, forborne to take the tithes of lands used and occupied as gardens, lawns, or the like, or compositions in lieu thereof, on account of such lands being of small extent, and the tithes thereof being of inconsiderable value: Be it enacted, that where in such cases the tithes of a parish or district have been commuted, whether by a parochial agreement or by a compulsory award, and it shall be shown to the satisfaction of the said commissioners that,

the rent-charge or rent-charges specified in the said agreement or award has or have been based upon the average value of the tithes of the said parish or district during the said seven years of average, exclusive of any tithes in respect of such gardens, lawns, or such like small holdings, according to the provisions of the said first-recited act, and that no part of the said rent-charge or rent-charges has been agreed to be given or awarded in respect of the tithes of such gardens, lawns, or other such like small holdings, it shall be lawful for the said commissioners, if they think fit, to order and direct that no part of the said rent-charge or rent-charges shall be apportioned upon such gardens, lawns, or other such like small holdings.

26. *The commissioners to cause a new apportionment to be made in cases in which the apportionment shall have included tenements from which no tithe has been taken during seven years previous to Christmas 1835.*—And whereas it hath happened that in cases where, during the seven years of average prescribed by the said first-recited act, tithes shall not have been demanded of certain tenements, by reason of their small extent or of the small amount of such tithes, such tenements have notwithstanding been included in the apportionment of the rent-charge for the parish, whereby the occupiers of such tenements have become liable to have their goods distrained upon, and the tithe owner has been subjected to much increased difficulty and expence in the collection of the rent-charge, contrary to the true intent and meaning of the said first-recited act; and it is therefore expedient, under certain restrictions, to give relief in such cases; be it enacted, that in any such case in which the apportionment shall have included any number of small tenements, exceeding in the whole one hundred, from which tenements no tithe or composition for tithe shall have been demanded or taken (notwithstanding their liability thereto) during the period of seven years next preceding Christmas in the year one thousand eight hundred and thirty-five, it shall be lawful for the commissioners, and they are hereby authorized, if they shall see fit, upon the application in writing of any ten or more of the owners or occupiers of such small tenements, or of the tithe owner, and after satisfactory proof shall have been given that no part of the rent-charge has been agreed to be given or awarded in respect of the tithes of such small tenements, to cause a new apportionment to be made of the said rent-charge, and to order and direct that no part thereof shall be apportioned upon such small tenements; and the provisions in the said first-recited act contained for hearing and determining objections to apportionments, and for rendering the same, or any map or plan therein referred to, final and conclusive, shall be and the same are hereby respectively made applicable to every such new apportionment; and, subject to such provisions, such new apportionment shall commence and take effect from the half-yearly day of payment of the said rent-charge which

shall happen next before the confirmation of the same apportionment: Provided always, that no payment of such rent-charge, or right to arrears thereof, which shall have become due or accrued on or before the said half-yearly day of payment, nor any remedy in case of nonpayment, shall in anywise be affected by any such new apportionment.

27. *Provision for the costs of new apportionment.*—And be it enacted, that the costs of and attending every such new apportionment shall be paid and borne by the parties making such application, in such proportions as the commissioners shall direct, and shall be recoverable in like manner as the costs of any apportionment under the said first-recited act; and as to any part of such costs as may be borne by the tithe owner, such tithe owner, being an ecclesiastical beneficed person, may charge or assign the rent-charge as a security for the repayment of such costs in like manner as for the costs of the commutation under the said act.

28. *Commissioners may adjudicate parochial boundaries on requisition of land owners of any parish.* 2 & 3 Vict. c. 62, ss. 34 & 35.—*Proviso.*—And whereas by the said lastly-recited act powers are given to the said commissioners or any assistant commissioner, upon the application in writing of not less than two thirds in number and value of the land owners in any parishes or townships, to set out and define the boundaries of such parishes or townships in manner in the said act provided; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted that it shall be lawful for the said commissioners or assistant commissioner, but at the sole discretion of the said commissioners, and only in such manner as they shall see fit and proper, to exercise all and every the powers so given by the said lastly-recited act relating to boundaries of parishes or townships, on the application in writing of two thirds in number and value of the land owners of any one parish, place, or township whose boundary shall be in question, notwithstanding the land owners in the parish, place, or township adjoining such boundary shall not join in such requisition: Provided always that in every such case the said commissioners or assistant commissioner shall, twenty-one days at least before proceeding to make inquiry and adjudicate on such question of boundary, cause a notice to be sent by the post, or otherwise given, addressed to the churchwardens and overseers, and also to the surveyors of the highways of every parish, place, or township adjoining such boundary, of the intention of the said commissioners or assistant commissioner to proceed on the question of such boundary, and shall specify in such notice a time and place of meeting so to proceed therein, and shall annex to each copy of such notice a copy of the application of the land owners requiring the commissioners to make such inquiry and adjudication, and shall also cause a copy of such notice to be inserted, once at least in two successive weeks previous to the day of such

meeting, in some newspaper having circulation in the county where such parish, place, or township is situated; and no assistant commissioner shall proceed in any such inquiry without exhibiting at such meeting the papers containing the advertisement of such notice, and also a certificate, under the hands of the said commissioners, or any one or two of them, of one copy of such notice having been respectively sent to such churchwardens and overseers, and a copy to such surveyors as aforesaid; and the assistant commissioner shall thereupon proceed in all respects, and his proceedings shall be as valid and binding, as if the said inquiry had been instituted on the application in writing of two thirds in number and value, as well of the land owners of the parish, place, or township to which such notice shall have been so sent, as of the parish, place, or township causing such inquiry to be instituted: Provided nevertheless, that upon the application in writing, addressed to the said commissioners during the interval of such twenty-one days, of not less than two thirds in number and value of the land owners in any parish, place, or township adjoining such boundary, and not being parties to any such application as aforesaid, objecting to the said commissioners or assistant commissioner proceeding under the same in the matter of such boundary, all proceedings which shall have been instituted upon the application of such single parish, place, or township under this act shall forthwith be stayed.

29. *This act to be taken as part of the recited acts, and of 1 & 2 Vict. c. 64.*—And be it enacted, that this act shall be taken to be a part of the said recited acts, and also of an act passed in the second year of the reign of her present Majesty, intitled "An Act to facilitate the Mergers of Tithes;" and in the construction of this act, unless there be something in the subject or context repugnant to such construction, the several words used in this act shall have and bear the same interpretation as is given to such words respectively in the said acts or either of them; and whenever a word importing the singular number or masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converse.

30. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

SELECTIONS FROM CORRESPONDENCE.

REMOVAL OF THE COURTS.

"A SUBSCRIBER" suggests a difficulty in the way of the proposal of Lincoln's Inn Fields as a site for the new courts, which site, he admits, may be convenient to the public; but he believes

that Lincoln's Inn Fields were left to certain trustees upon the express condition that the area or square should not be built upon, upon pain of forfeiture to the heir at law of the testator; and he asks why should the occupiers of Lincoln's Inn Fields be deprived of a square, almost unparalleled in the metropolis, where they may quietly and in comparative retirement forget the fatigues of the day? Our correspondent then suggests that the gardens of Lincoln's Inn might be used for the purpose of the new buildings, on obtaining leave from the Benchers, and if placed at the top of the avenue would present an imposing appearance, while the Lord Chancellor's and the Vice Chancellor's Courts might remain in their present location. The Registrars and Chief Clerks would be close at hand, and much unnecessary expense saved.

The difficulty, if any, of obtaining leave to build on Lincoln's Inn Fields will, we presume, be readily removed by an Act of Parliament, which for the other purposes in view, we presume, the proposers of the change have all along contemplated. There is a local act relating to Lincoln's Inn Fields to which we shall advert. If compensation be required by the proprietors of the Houses, what will a jury give them, when it is clear that the rental would be largely increased by the new building?

ED.

MOOT POINT.—SINGULAR CAPTION.

Sir,

I AM of opinion a legal capture was effected under the circumstances mentioned by "Leg Bail," (p. 56, *ante*). I confess I gave up in despair the attempt to find a case in *quatuor pedibus*, but do not think the point destitute of a capacity for the most anatomical investigation of principles. I apprehend it to be clear that if a debtor's hand be outside a window, and the officer salutes it with the cordial grasp, betokening a desire for a closer intimacy, the latter may relinquish the initiatory connexion, and gratify his predominating wish by breaking open the street door. Anon. 1 Ventr. 306. When that case is examined with the legal acumen of Leg Bail, I think he will see great reason to conclude the reluctant friend wore gloves; and, judging our ingenious ancestors by ourselves, I strongly suspect that in an acquaintance so unilateral, the same mode of repulsing an ardent but disagreeable follower was adopted. If so, it is plain that flesh and blood need not be conscious of actual joinder, but that excluding the sense of direct touch, it is sufficient if there be an approximating sensation; and surely it is physically demonstrable that the defendant could not part with his inanimate leg without a conviction that the laws of attraction had been violated by the bailiff's pertinacity. If Leg Bail should not be satisfied of the fact that the defendant in the case in Ven-

tris had a glove on, I think the familiar instance of the coat collar will support my analogy.

I very much doubt the soundness of the plaintiff's argument upon the point of estoppel. In one view the defendant was estopped, for his leg was firmly restrained from progressive action by the bailiff; but apart from the laws of motion, it is clear from *Hudson v. Robinson*, 4 M. & S. 475, estoppel, to be effectual, must be mutual. If, therefore, the defendant is precluded from averring the timber limb not to be part and parcel of his own proper carcase, the plaintiff, upon the principle of mutuality, is precluded from denying the capture and possession. If the cork is the representative of the defendant, to ground the arrest, I really think great difficulty will be experienced in obtaining an escape warrant. It cannot be disguised that the sheriff is placed in a disagreeable predicament, for if ruled to make his return, (the veracity whereof is under the especial protection of an attorney), I fear *cepi corpus* would be held false, and *non est inventus*, coming out of the sheriff's mouth, with the defendant's leg actually in his hand, would sound somewhat ludicrous.

I have a MS. case decided by the Court of Piepoudre, not of indubitable authority, certainly; but such as it is, Leg Bail is welcome to it.

The defendant, having judgment against him, corporal process was issued. The officer had been a son of Mars, and, in the way of his amiable vocation, had encountered the misfortune of Lord Anglesey, with this slight difference, the latter's leg was consigned to the grave—the former's arm. "Piping times of peace" coming, the officer cast his eye upon the bailiff's calling, and, conscious of the serious impediment to an efficient discharge of the duties from his mutilation, he, in a happy hour, bethought him of a wooden substitute with a hook. Thus equipped, he looked down upon the entire code formed of the law of escape with that satisfied smile generally indicative of thorough contempt. Armed with the Piepoudre process and his hook, he sought the defendant, who entertained all those sensitive feelings upon the subject of liberty so characteristic of a Briton, and (characteristic again) failing in argument to shew the importance of doing as we like, he, in imitation of the ancient, whose name I forget, confuted the sophistry opposed to him by incontinently running. He attained the limit of the Court's jurisdiction, but the bailiff was in his rear; and it came out upon affidavit that just before the defendant's step over the line of demarcation, the officer insinuated the hook into the most capacious part of the defendant's unwhisperables. Upon the part of the defendant it was contended that it was no arrest, and that the plaintiff was bound to apply for the aid of the superior courts under 19 G. 3, c. 90. The Court however decided that the defendant's application to be discharged clearly established that he was in *gremio legis*, and that the instrument of capture was in the eye of the law the bailiff's arm, because it was nobody else's.

J. B. W.

[Concluded from p. 144, ante.]

Clerks' Name and Residence.

Shepherd, William Luke, 15, Compton Street East; and Scarborough.
 Scobell, Edward Henry, 9, Chadwell Street; Bideford; and 15, Jewin Crescent.
 Smith, Arthur Wellesley, 2, East Street, Red Lion Square, Queen Square.
 Scott, Thomas, Frederick's Place, Old Jewry; and Stourbridge.
 Smart, John Naish, Bristol.
 Sweet, Henry, 53, Lamb's Conduit Street; Launceston; and 40, Ely Place.
 Sutton, Thomas, Cheetham; and Manchester.
 Seckerson, Henry Barlow, Stafford.
 Smith, George, Durham.
 Snaith, George, 19, Charles Street, Euston Square; 55, Gloucester Street; and Boston.
 Staley, Alfred, Stroud; and Church Row.
 Snape, Thomas, 3, Haberdasher Street, Hoxton; and Warwick.
 Slaney, Thomas, Lee Crescent, Edgbaston, near Birmingham.
 Tucker, Andrew, 21, New Millman Street.
 Tucker, Arthur, Chard.
 Thistlewood, John, 3, Chatham Place, Hackney; and 43, Bow Lane.
 Tucker, Richard Grant, Tiverton.
 Tehbs, William, 10, Southampton Street; Hereford; and Mitre Court Buildings.
 Thackwell, James Seabright, Monmouth.
 Turner, William, 30, Queen's Row, Pimlico; and Grantham.
 Tiffen, John, Cross Hills, Wigton; Wigton; and 4, Manchester Street.
 Vipian, Edward Joseph, 93, Quadrant; 17, St. Alban's Place; and Thetford.
 Velej, Frederick Thomas, Chelmsford.
 Vivian, James William, 56, Guildford Street.
 Verrall, Henry, 4, New Millman Street; and Brighton.
 Veysey, Arthur, 4, New Millman Street; and Brighton.
 Weall, William, 27, Francis Street, Torrington Square; and Beddington.
 Weyman, Thomas, 34, Holmes Street, Commercial Road.
 Webb, James Michael, Eedgefield, near Holt.
 Williams, Charles Henry, Pontypool; Newport; 3, Spring Gardens; and 6, Great Ormond Street.
 Walkey, Joseph Elliott Collins, 2, Southampton Buildings; Exeter; Burton Street; and 14, Featherstone Buildings.
 Webb, Edward John, 26, Alfred Street; and Ledbury.
 Wise, John Joseph, Ashborne.
 Wise, Charles William, 20, Praed Street, Edgeware Road; and 57, Museum Street.
 Wardle, Joseph William, Leeds.
 Wright, Charles, 8, Everett Street; and Swaffham.
 Waller, George, the younger, 24, Finsbury Circus.

To whom articulated and assigned.

John Uppleby, Scarborough.
 Harry Arthur Harvie, Bideford.
 Edward Harrison, Southampton Buildings.
 William Morgan Crompton, Stourbridge.
 Charles Savery, Bristol.
 Northmore Herle P. Lawrence, Launceston.
 Edward Bent, Manchester.
 Philip Seckerson, Stafford; assigned to Edward Bell, Stafford.
 John Hutchinson, Durham.
 Peter Tuxford, Boston; assigned to Buxton, Kenrick and Harwood, Boston.
 William Aldridge, Stroud.
 Daniel Winter Burbury, Warwick; assigned to Algernon Sydney Field, Leamington Priors.
 Cornelius Benson, Hagley Road.
 John Henry Benbow, Stone Buildings.
 Charles Benjamin Tucker, Chard.
 Thomas Lott, Bow Lane.
 John Loosemore, Tiverton; assigned to Robert Loosemore, Tiverton.
 William Humphrys, Hereford.
 John Stuart Collins, Ross.
 Henry Loftie Rutton, Ashford; assigned to John Lely Ostler, Grantham.
 Joseph Studholme, Wigton.
 Frederic Lane, King's Lynn.
 Thomas Perkins, Chelmsford.
 Charles Clarke, Lincoln's Inn Fields.
 John Tribe, Steyning; assigned to Robert Upperton, Brighton.
 Robert Upperton, Brighton.
 John Drummond, Croydon.
 William Downes, Ludlow; assigned to James Cross, Staple Inn.
 Robert Baker Bellachey, Holt.
 George Reynolds New, Newport; assigned to James Birch, Newport.
 William Richard Bishop, Exeter.
 Joseph Allen Higgins, Ledbury.
 William Wise, Nottingham; assigned to J. G. Johnson, and T. Wise, Ashborne.
 Edward Argles, Biggleswade.
 John Lofthouse, Leeds.
 Edward Sewell, Swaffham; and Robert Sewell, Swaffham.
 George Waller, the Elder, Finsbury Circus.

Clerk's Name and Residence.

Ward, Frederick Thomas, Maidenhead.

To whom articulated and assigned.

Charles Scudamore Ward, Maidenhead; assigned to William Thomas Ward, Maidenhead.

Wiggins, James Mann, 20, Gloucester Street, Queen Square; and York,

William Napier Dibb, York.

Yarington, William Samuel, 8, Everett Street, Russell Square; and Swaffham.

Samuel Sadler, North Walsham; assigned to William Yarington, Swaffham

Notices of Admission in the Eschequer of Pleas and Common Pleas.

Alman, Michael, Bristol; 11, New Ormond Street; and Bridge House Mall, Hammer-smith.

William Bevan, Bristol.

Newland, Henry, Chichester; and 20, Sidmouth Street, Gray's Inn Lane.

John Dixon Newland, Chichester.

Shipton, Joseph, Stroud.

George Edwards, Stroud.

Moxon, James, Shelton, Staffordshire.

George Jones, Newcastle-under-Lyne.

Added to the List pursuant to Judges' Orders for Admissions in Michaelmas Term.

Burgass, George, 5, John Street, Adelphi; and Portsmouth Street.

John Curtis, Basinghall Street.

Densham, Richard, 20, Upper Wharton Street; and Bampton.

Thomas Row Densham, Bampton.

Michell, Charles Clement, 16, Warwick Court; and Shepton Mallett.

Edward Michell, Shepton Mallett.

Serjeant, Robert, 21, Spencer Street, King Square; and Wadebridge.

R. Symons and E. Luxmore, Wadebridge.

Vallance, Henry Wellington, Milton next Gravesend.

Charles Cook, New Inn; assigned to William Alex. Combe, Milton; assigned to Henry Newbon, Milton.

SUPERIOR COURTS.

Lord Chancellor's Court.

JURISDICTION.—PRACTICE.

*The Court cannot give the Vice Chancellor authority to discharge an order made by the Master of the Rolls.**The Court will not grant, as of course, an application to fix a day for hearing a petition or motion. They must be brought on in their order, without displacing other petitions or motions.*

Mr. Wigram asked that the Lord Chancellor would direct the Vice Chancellor to hear a motion and petition in this matter. The object of the motion was to discharge an order made by the Master of the Rolls, substituting a person as next friend in an infant's suit, for the person who had hitherto been the next friend; and the petition was to discharge a common order obtained at the Rolls for taxing this next friend's bill of costs.

The Lord Chancellor said he had no power to direct the Vice Chancellor to discharge an order of the Master of the Rolls or to hear an appeal from him.

Mr. Wigram then asked if his Lordship would appoint next Saturday week to hear the motion.

The Lord Chancellor.—I cannot allow other petitions or motions to be displaced for these. They must come on in their proper place, either as petitions or motions.

Pearce v. Brooks.—Sittings at Westminster, July 1st, 1840.

ATTACHMENT.—EXEMPLIFICATION OF RECORDS.

By act 41 G. 3, c. 90, s. 6, any decree or order to pay money, made by the Court of Chancery in Ireland, may be certified to the Court of Chancery in England, and the Lord Chancellor in England shall cause such decree or order, when presented to him so exemplified, to be enrolled, and shall cause process to issue: Held, that not only the decree, but all the subsequent proceedings, must be certified to enable this Court to issue process, &c.

This was a motion to discharge an order of the Vice Chancellor, directing an attachment to be issued against Mr. Haig for payment of costs in a suit in Ireland. Mr. Haig had been plaintiff in a cause in the Court of Chancery in Ireland, against Sir William Jackson Homan and others; and his bill, filed against them in 1836, was dismissed with costs in 1837. The costs were taxed at 236*l*. Mr. Haig appealed against that decree and several other orders of the Court of Chancery in Ireland, to the House of Lords, and his appeal was set down for hearing. He left Ireland before any order could be served on him to pay the costs. The defendants to the suit in Ireland, and the respondents in the appeal, or some of them, got the proceedings in the cause in Ireland transmitted to the Court of Chancery in England, according, as they conceived, to the directions of the act 41 Geo. 3, c. 90, ss. 5 & 6, and obtained from the Vice Chancellor an order of attachment to arrest Mr. Haig for the costs, and being found in London about his appeal, he was arrested.

Mr. Girdlestone moved for the discharge of

the prisoner and of the order of attachment, upon the ground that the record of the proceedings in the Court in Ireland were not duly exemplified and enrolled in the Court of Chancery in England. By the 6th section of the act 41 G. 3, c. 90, it was enacted that where orders shall be made by the Court of Chancery in Ireland, for payment of money, a copy thereof shall be certified under the great seal of Ireland to the Court of Chancery in England, where, when so exemplified, it shall be enrolled, and process shall be issued to enforce obedience. He submitted that the whole proceedings in this suit should be exemplified, and not merely the decree, which alone was certified in this case.

Mr. Wigram was about opposing the motion upon the merits—

The Lord Chancellor, observing upon the certificate of the proceedings in Ireland, said he could not hear any thing on the merits, as he was clearly of opinion the directions of the act were not complied with. Not only the decree of dismissal, but the other orders in the cause also, should be exemplified and enrolled, in order that the Court here enforcing those orders, might be able to see what was done. From this record, he could not officially know what was done upon the decree. The certifying officer said, that having inspected the other orders and proceedings, he certifies so and so. But that was not sufficient—this Court should have before it an exemplification of the whole proceedings. His Lordship directed the order for the attachment to be discharged.

Ex parte Faig, in the cause of *Haig v. Homan and others*, Sittings at Lincoln's Inn, June 27, 1840.

Rolls Court.

LUNACY.

Where a person has been found a lunatic under a writ de lunatico inquirendo, the Court will not, in a suit instituted for the purpose of setting aside a conveyance by the alleged lunatic, take upon itself to determine between conflicting evidence as to the question of sanity, but will direct an issue.

In February, 1809, the plaintiff executed a conveyance of an estate, of which he was seised in fee, to a person named Moggeridge, through whom the defendant claimed.

In 1837 a commission of lunacy was issued, under which he was found a lunatic, the jury declaring him to have been a lunatic ever since the year 1796; and shortly afterwards this suit was instituted by his next friend to have the conveyance to Moggeridge set aside, and the property delivered up to the plaintiff, or to his committee.

The bill contained various statements to shew the plaintiff's incompetency to do any legal act at the time he executed the conveyance to Moggeridge, together with charges as to the inadequacy of the consideration, and prayed that the conveyance might be set aside, and that an account might be taken of the sums paid by Moggeridge as the consideration for his alleged purchase, and that upon payment of those sums the defendants might be directed

to re-convey. The defendants, by their answers, denied the plaintiff's incompetency, and urged the length of time that had elapsed since the conveyance was executed. Much evidence was adduced on both sides on the question of competency, and of a very conflicting description.

Pemberton and Hull, for the plaintiff, referred particularly to the finding of the jury under the writ *de lunatico inquirendo*, which, though not positively conclusive, was entitled to grave consideration, and, coupled with the evidence given in support of the bill, completely established the fact of the plaintiff's incompetency at the time the conveyance was executed. The defendants could not dispute the existence of insanity in the plaintiff, and the *onus* therefore lay upon them to shew that the deed in question was executed during a lucid interval. *Attorney General v. Parather*, 3 Bro. C. C. 441.

Kindersley and Rolt, for some of the defendants, (devisees of Moggeridge), admitted that it was for the defendants to establish that the plaintiff, if the Court should decide upon his general incompetency, had intermissions of his disorder, and that the deed in question was executed during a lucid interval. The best evidence that could be adduced was the transaction itself, and if it could be shewn that this was of such a nature that a man in full possession of his faculties would have completed it; that in short it was a rational act, and that the plaintiff was left to his own free agency, it might fairly be inferred that there did exist that lucid interval which the law contemplated as sufficient for effectuating a contract, even by a party generally incompetent. The evidence on the part of the defendants completely rebutted the charge as to deficiency of consideration, and although the testimony on both sides tended to prove a gradually decreasing capacity, there was nothing to shew positive incompetency at the time the conveyance in question was executed. In support of their first proposition they cited *Hall v. Warren*, 9 Ves. 605.

Wood, for the other defendants, who claimed as mortgagees of Moggeridge, insisted that the bill must at all events, be dismissed against them. Their mortgage was made twenty-seven years ago, without any knowledge of the circumstances charged by the bill, and they were entitled to the same benefit as purchasers for valuable consideration without notice. *Winchcombe v. Hale*, 1 Chan. Rep. 40; *Neile v. Morley*, 9 Ves. 47. The bill also did not pray that the deeds should be declared void, but only that the property should be re-conveyed, and the plaintiff was at most only entitled to a re-conveyance, subject to charges *bond fide* created.

The *Master of the Rolls*.—The bill is filed for the purpose of setting aside certain deeds executed by the plaintiff in the month of February 1809, and it alleges that the plaintiff was fraudulently practised upon by Moggeridge in procuring the execution of such deeds. I do not think that the allegations of the bill respecting the frauds charged are borne out by any of the evidence adduced, and the whole question therefore is what was the state of

mind of the plaintiff at the time the deeds were executed. Much evidence has been given on this point as well on behalf of the defendant as of the plaintiff, and, what is of far more importance, a commission has been issued to ascertain the plaintiff's state of mind, and the return to the inquisition is, that the plaintiff is a lunatic, without lucid intervals, and that he has been so since the 1st of June 1796. Now, these deeds having been executed in February 1809, the jury have found that the plaintiff was a lunatic at the time they were executed, and although in lunatic matters the enquiries are *ex parte*, still the finding of a jury alters very much the position of parties. *Prima facie*, every man is supposed to be of sound mind, and capable of transacting all ordinary affairs, and it lies upon the parties seeking to impeach any acts on the ground of insanity to prove the existence of that malady; but when once the fact has been established by a jury, the *onus probandi* is shifted; and accordingly the defendants in this case have proved various acts done by the plaintiff, such as sales and mortgages, which of themselves might be sufficient to rebut any presumption of insanity; but the other evidence must not be overlooked, and a jury having found that the plaintiff was a lunatic from the year 1796, I cannot take upon myself to determine whether he was competent to execute the deed in question. An issue must therefore be directed, to ascertain whether the plaintiff was of sound mind at the time he executed the deeds in February 1809.

Price v. Berrington, 30th June, 1840. M. R.

Queen's Bench.

[Before the Four Judges.]

BURGESS ROLL.—OVERSEER'S SIGNATURE. —PENALTY.

The overseers of a parish are bound, under the 5 & 6 W. 4, c. 76, s. 15, to make out a list of all the persons in their parish entitled to be on the burgess roll. If they neglect to do so, they are liable to the penalty imposed by the 48th sec. of that statute, and they are so whether their neglect was accidental or wilful.

Where a parish is divided into wards, and has several different overseers, all must sign such list, and the omission of any one of them renders him liable to the penalty.

The name of the overseer appearing in the list and in his own hand-writing, but not being signed to it, will not exempt him from the penalty. The meaning of "sign" in the act is putting the name at the bottom of the list.

This was an action brought to recover a penalty of 50*l.*, under the 48th section of the act for the regulation of municipal corporations, 5 & 6 W. 4, c. 76. The declaration set forth the provisions of the act, by which the overseers of parishes are required to make out, sign, and deliver to the clerk of the peace, lists of the burgesses resident within their boroughs, and averred that the defendant had not made out, signed, and delivered, &c. The defendant pleaded not guilty. The cause was tried at the

Norfolk Spring assizes, 1839, before the Lord Chief Justice Tindal, when a verdict was taken for the plaintiff, leave being reserved by the defendant to move and enter a nonsuit. It appeared by the evidence adduced that the borough of King's Lynn, in the county of Norfolk, is divided into three wards, under the provisions of the municipal corporation act. The borough comprehends the parishes of St. Margaret and South Lynn. By an act of William the 3d, the parish of St. Margaret was divided into nine wards for certain local purposes; and by another act (of the 48 Geo. 3d) a corporation, called the Court of Guardians was constituted for the relief and management of the poor of that parish: and it was further provided that two magistrates of the borough should annually "nominate and appoint for each ward (of the said nine wards,) one substantial householder to be overseer of the poor for that ward," and that the nine persons so nominated, "for the said nine wards" should be the overseers for the said parish of St. Margaret. The defendant in the year 1838, was duly appointed overseer "for the ward of Sedgeford Lane," being one of the abovementioned nine wards: on the 5th of September in that year, he delivered at the town clerk's office "a list of the burgesses entitled to be on the burgess roll, for the borough of King's Lynn, in respect of property within the ward of Sedgeford Lane. This list, which was in the hand-writing of his son, contained the defendant's own name, and at the foot of it was the word "overseer," before which it was intended that he should have signed his name, but he inadvertently and unintentionally omitted to do so. When he delivered the list at the town clerk's office, the clerk to whom he delivered it, observed to the defendant that "he had omitted to insert the name of William Docking," whereupon the defendant with his own hand inserted the name and qualification of Docking in the list. No intimation was given to the defendant that the list was not signed, "the clerk not thinking it of any consequence."

The overseers for the other eight wards respectively delivered their lists to the town clerk on the 5th of September. Each of these lists contained only the names of the burgesses in the respective ward of the overseer by whom it was made out and delivered, and each severally signed by the overseer alone, who had made it out. No one list signed by all the nine overseers of St. Margaret was made out and delivered, nor was any list for the parish of St. Margaret delivered to the town clerk, except the nine several lists before mentioned. No objection was made by the town clerk to the reception of these lists; and having caused them to be printed and stitched together, he duly affixed them upon the doors of the town hall on the days and in the manner required by the statute. In due time the before mentioned nine lists were produced by the town clerk at the mayor's revising Court, and were duly revised by the mayor and assessors. The town clerk made a burgess roll from such revised lists, and the burgesses upon such roll duly

elected the town councillors at the then next election. No evidence was given of any corrupt motive actuating the defendant, or the other overseers of the parish. The plaintiff had brought separate actions against the other eight overseers for not making out and delivering one list for the whole parish.

Mr. Kelly and Mr. O'Malley shewed cause against the rule which had been obtained to enter a nonsuit.

The Attorney General, Mr. Andrews, and Mr. Gunning were heard in support of it.

It has been deemed unnecessary to give the arguments of counsel, the several points in the course of them being most fully adverted to in the judgment of the Court.

Lord Denman.—This is an action on the Municipal Corporation Act, brought by the plaintiff against the defendant, an overseer of the parish of St. Margaret in King's Lynn, to recover from the latter a penalty of 50*l.* for not making out and signing an alphabetical list of burgesses resident in the said parish. The duty cast upon the overseer in this respect arises upon the 15th section of the Municipal Corporation Act, which provides for the manner in which that duty shall be performed. It requires that overseers shall sign lists of the burgesses resident in their parish, and deliver them to the town clerk. The 48th section creates the penalty for neglect of the duty thus imposed on the overseer. That section provides "that if any overseer shall neglect or refuse to make out, sign, and deliver such list as aforesaid, he shall for every such offence, forfeit the sum of 50*l.*" It is upon these two sections that this action is founded. It is important to observe that these two sections afford the only security for the carrying of this Act of Parliament into effect. There is nothing besides the provisions of these sections to provide a punishment for an individual who refuses or neglects to perform his duty. The whole was left to the effect of their provisions. Then the question we have now to decide is as to the meaning of these sections. It is clear that the declaration properly states, that the defendant had neglected and refused to make out and sign the list of his parish. This is an infraction of the provisions of the 15th section, and an offence within the meaning of the act. But then it is argued that in point of fact the defendant was entitled to a nonsuit, for in truth he had not neglected to make out the lists, or if he had neglected to do so, still that his neglect was not wilful, and that consequently the penalty does not attach upon him. It has been further alleged that the declaration is bad on other grounds. It is said that he has in truth made out and signed the lists. The facts of the case are these: the parish was divided into nine wards, and one overseer was appointed for each, and each of the nine overseers acted for his particular ward. Eight of the overseers signed the lists, but this defendant, acting for the ninth ward, did not sign the list in question. This omission is said on the part of the plaintiff to bring the defendants' case within the words of the 48th section, and certainly those words do appear to me (Lord

Denman) to apply directly to a person so acting. But then it is argued for the defendant, that as all the overseers gave in their lists together, that all the separate lists of each ward constitute but one borough list, and that the defendant, although he did not actually sign the particular list of his district or ward, made his name appear upon it, and that that might be taken to be a signature by analogy to the cases decided on the statute of frauds. It must however be confessed that the signature, in this instance at least, cannot but be understood as the placing of the name at the bottom of the list, and that the putting of it in any other place is not a compliance with the provisions of the act, but constitutes a breach of those provisions. But then it was contended on the part of the defendant that this could not be said to be wilfully done, and the fact that there is no such allegations of wilfulness on the record has been put forward as a ground for the motion in arrest of judgment, because it is said that the absence of wilfulness takes the case out of the statute. In my opinion, it is unnecessary to state or prove a wilful disobedience of the statute. The intention of the law is, that the parties entrusted with the performance of a duty of this sort, must know what are the provisions of a statute relating to that duty; that they ought to obey those provisions; and that if they neglect to comply with the directions of the statute, they must be punished for that neglect. It was a wise and prudent precaution on the part of the Legislature to leave the matter without any reference to a wilful disobedience; for if in every such case there must be an inquiry into whether the neglect arose from corrupt motives, and was wilful or not, there would be no end to such enquiries, and juries, from a feeling of good nature, which often tends to defeat justice, might not suffer a penalty of 50*l.* to be inflicted on a man for an act of negligence of this sort. It may be true, as has been argued, that this would be a severe penalty for an accidental omission to do a particular act; but it seems to me, that it was meant by the legislature that an omission should be so punished, without reference to the nature or the cause of such omission. But when the argument as to the inconvenience of making an accidental omission renders a person liable to such a penalty is pressed, as it has been to-day pressed upon us, I must say that I do not think that that argument can be borne out to the extent to which it has been urged. An act of omission arising from incapacity, and an act of negligence, are not the same thing. It has been said that a man might be guilty of an omission if he was prevented by a superior force from doing a certain act; but it seems to me that if proofs of an omission from such a cause was given, it would cease to be an omission, so as to bring the party within the provisions of the act, and it would prove that he had not contravened those provisions, but only that he had not had it in his power to obey them; and if this excuse could be shewn to be *bona fide*, it would be an answer to the complaint. Then again, as to the argument that if the words of the statute

are followed, the making of a list not strictly alphabetical, would subject a man to the penalty; it seems to me that such is not the true construction of the act; that when it requires an alphabetical list, it does not mean the perfect collocation of every letter of every word, so as to be alphabetical in the meaning of that phrase when used by a dictionary compiler, but a list so framed as to be capable of easy reference by the means of an ordinary alphabetical arrangement. Small matters of this sort do not seem to introduce any difficulty into the case. I have gone so far on the construction of the statute: I now come to the declaration. It has been objected that the declaration is bad, and that judgment ought to be arrested, for that though the defendant is charged with not making and signing a list, the declaration does not in fact allege that the list was not made out, each of the other overseers having made out and signed his portion, and all the portions together being said to constitute the lists. That however is not a valid objection to the declaration, for each party has to answer for his own conduct; and the conduct of all the rest cannot make that of any one individual among them more or less guilty than he is by his own acts. Suppose that these various lists had been made up into one, and that this one so made up had been signed by the majority of the overseers, yet if the defendant had neglected his own duty in respect of it, he would be punishable for that neglect, and it would be unnecessary to aver that the other overseers had or had not signed the list. It is possible that the majority of the overseers might have signed the list, and so not have contravened the act of parliament, and as the act of the majority is in many cases the act of all, it has been insisted that that is a sufficient answer to the action. If that is really a good defence in point of fact, it must be assumed now that that defence has been made and negatived, for otherwise the act of this particular defendant would be excused, and yet on the facts the jury have found a verdict against him. On all these grounds I am of opinion first, that it was the duty of all the overseers to sign the burgess lists of their parish; secondly, that if any of them should be proved to the satisfaction of a jury to have neglected that duty, he will incur the penalty imposed by the act; thirdly, that the fact of other persons having signed particular portions of the lists while he did not sign his part, such part being necessary to make the rest complete, would not excuse him from the penalty imposed upon him by the act for the offence of such neglect of duty.

Mr. Justice Patteson.—I am entirely of the same opinion. The question in arrest of judgment assumes that the majority of the overseers' signatures would have been sufficient. Unless that is so, it is not necessary to negative the fact that the lists were signed by a majority of the overseers. Then it is said that if the signatures of the majority would have been sufficient, the want of an allegation that the list was not so signed would not be cured by verdict. I do not think that that argument is

well founded; for it can only be proved on the ground that the act of the majority is the act of all: then the signature of the majority would be the act of the defendant, and the averment that the defendant has not signed would make it necessary to shew before the jury that the list was not signed by the majority, in order to make out the averment that the defendant had not signed it. But it is said that in fact the majority did sign the lists. That is not so. Here are nine lists in being. The ninth list, that of the defendant, is not signed by any one at all. It is impossible therefore to say that the ninth list is signed by the majority. That list is altogether bad. It appears that there is a division of the parish into nine wards, and that each of these nine wards elected an inhabitant, and that the nine persons thus elected became the overseers of the parish. But that circumstance does not in the least affect the provisions of the Municipal Corporation Act. All the overseers of every parish are by that act bound to give in one list of names, and one list only. So that the giving in of nine lists, each of which was signed by one overseer, seems to me an incorrect mode of proceeding. The consequence of that may be that there may be an action against each overseer. I am clearly of opinion that it is necessary under this act of parliament that the list should be signed by every one of the overseers. I admit that in most cases the act of the majority of the overseers is sufficient. That is so in general; but when we look at the 48th section of the Municipal Reform Act, it seems to me to put the matter beyond all doubt, for it creates the penalty, and then declares that if any overseer (in the singular number) shall neglect to sign the list, he shall for such offence forfeit the sum of 50*l*. What is the meaning of these words, but that each and all of the overseers should sign the lists? Then, that being so, the remaining question is, whether we are to import into the 48th section of the statute the word 'wilful.' Day by day I see reason to be confirmed in the resolution not to import any thing into an act of Parliament unless there is an absolute necessity for doing so. When once you begin doing so, difficulties arise which seem to have no end whatever. Sometimes there is one clause in an act of parliament which seems contrary to every other. Then if we are to try to find what is the intention of the legislature, and are for such a purpose to import expressions into that or the other clauses, we may be subject to continual doubts and difficulties. There are no words in this act which would justify the introduction of the word *wilful* into this clause of it. The words are simply "that if any overseer shall neglect" &c. What do they mean? If any man, under any circumstances, shall omit to do that which is a duty cast on him by act of parliament, and which he is capable of performing, can his not doing such thing be deemed a neglect to do it? I think that they do. I think that that man is guilty of an omission who is bound to do a thing, and can do it, but does it not; and that such omission is, within the terms of this statute, an act of negligence. The arguments for the defen-

dant here apply not to a case of mere omission, but to a case of option, and the present is not a case of option. It is impossible for us to import into this statute the word wilful. We have been pressed with the consequences of not doing so. I am not in the least affected by any of the arguments on that point. I understand the 48th section to mean that if an overseer shall neglect &c. to prepare such list; that does not mean a correct list, in which there is not a single omission of any kind or sort. He must sign and deliver this list, which must be drawn up in alphabetical order, but not in such exact order as to be without any alphabetical irregularity. But then it is said that the legislature did not intend that the same penalties should be inflicted on a man for accidental negligence as for the most corrupt and wilful omission of his duty. So far as this act of Parliament is concerned, it seems to me that the penalty is the same in both cases; but it does not follow that the same penalty only would attach because if it was a corrupt omission other penalties would attach, and therefore no such injustice would follow. On the whole I do not doubt that the verdict is right, and that this rule must be discharged.

Mr. Justice Williams concurred.

Mr. Justice Coleridge.—I am of the same opinion. I certainly did hesitate for some time in coming to that conclusion, moved by the harsh consequences which a decision of this sort seemed likely to produce. But upon reflection I think that this is the true judgment to which the Court must come. The first question here is whether the act has been contravened. It seems to me that it has; whatever construction we may put upon the 15th section of the statute. The only doubt raised on that section is whether the act requires that a majority only of the overseers or that all of them should sign the list. If all, then it is clear that the defendant has neglected a duty which he was bound to perform. If the act requires that a majority should sign, then his list was not signed, and I think that that was not a list which would satisfy the terms of the act of Parliament. It was noticed in evidence that an individual might be omitted by one overseer because he did not conceive that individual to be entitled to be on the list, that this would happen on account of his not having consulted the overseers of other wards, who might have a better knowledge of the facts. That shews a practical inconvenience from the mode of framing this act of parliament. But either way,—whether the signature of the whole of the overseers or of a majority of them is necessary,—the provisions of the act have not been complied with. The next question is, whether the defendant has so conducted himself as to render himself liable to the penalty imposed by this act. If we construe this act of parliament in that which seems to me the only safe mode of construing it, I think it clearly established that the defendant has neglected his duty. He has not signed the lists in the way required by the act. He has neglected to do that which by the provisions of the act he was bound to do, and that he has no lawful

excuse to offer for such neglect. Whether that neglect arises from carelessness or wilfulness it is equally in contravention of the provisions of the act. I think that the word 'neglect' in this act must be brought within the meaning assigned to it by the plaintiff. In construing this act, we must not be governed by the consideration of acting with too much or too little severity. It is not for us to alter but to interpret an act of parliament, and to carry its enactments into effect.

Rule discharged—*King v. Burrell*, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

ADMISSION.—COURT ROLLS OF MANOR.—STEWARD'S FEES.—FORM OF SURRENDER.

It is a good custom in a manor to require a separate admission connected with a description of the lands surrendered, instead of a general admission, merely describing generally the lands previously surrendered.

In this case a tenant of the manor of Bishop Stoke had surrendered tenements, to the number of twenty-eight, on a certain day. To these it was proposed that the son of the tenant should be admitted, as certain pecuniary arrangements were in progress between the father and the son. In order to save expense, it was proposed by the advisers of the son that his own solicitor should prepare the admission, and that the admission should be in a general form, describing the tenements to which the admission was to be, as "all the tenements which the father had surrendered" on a certain day, without particularly describing each particular tenement. To both these proposals the steward objected; first, because the custom had always been for the steward to prepare the admissions; and secondly, because the custom was to require admissions describing particularly the premises to be admitted to. With these few suggestions the son's advisers would not comply, and the steward refused to admit. A rule *nisi* for a *mandamus* to admit according to the proposal of the applicant having been obtained,

Erle and *Peacock* shewed cause, and contended that the custom set up by the steward on both points was good, and therefore that the rule ought to be discharged. If the form of admission suggested by the applicant was adopted, the greatest confusion would necessarily result in the rolls of the manor. It would, in case of any rolls being lost, be quite impossible to trace title to the property.

Thesiger and *Beavan* supported the rule.—It was unreasonable that the steward should be authorised to monopolize the fees on making surrenders, to the exclusion of all other persons whom the parties interested in the proceeding might think proper to employ. As to the second claim of the steward, although some inconveniences might on some occasions by possibility accrue in consequence of a general form of admission, that was not an adequate ground for not adopting the course proposed.

Coleridge, J., intimated that he thought the custom for the steward to prepare the admissions was a good one; but disposed of the rule on the ground that the custom to have the admissions in the specific form proposed by the steward, was a good one, and on that ground discharged the rule.

Rule discharged.—*The Queen v. The Steward of the Manor of Bishop Stoke*, T. T. 1840. Q. B. P. C.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Copyholds Enfranchisement. *Ld. Brougham.*
[In Select Committee.]

For facilitating the Administration of Justice in Equity. *Lord Chancellor.*

[In Select Committee.]

For the commutation of Manorial Rights.
[For second reading.] *Lord Redesdale.*

Vagrants' Removal.

[For third reading.]

To augment the Maintenance of the poor Clergy. [For second reading.]

Inclosure Acts Amendment.

[For second reading.]

House of Commons.

Small Debt Courts for

Liverpool,

Marylebone,

Wakefield Manor.

Metropolitan Police Courts.

[In Committee.]

To amend the Law of Copyright.

[In Committee.] *Mr. Serjt. Talfourd.*

To extend the Term of Copyright in Designs of woven Fabrics. *Mr. E. Tennant.*

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

[In Committee.] *Lord J. Russell.*

To extend Freeman and Burgesses' Right of Election. *Mr. F. Kelly.*

Drainage of Lands.

Mr. Handley.

[In Committee.]

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. *Mr. Mackinnon.*

To consolidate and amend the Law of Sewers.
[In Committee.]

Summary Conviction of Juvenile Offenders.

[In Committee.] *Sir E. Wilmot.*

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage. *Mr. W. Miles.*

To abolish capital punishment in all cases except Murder. *Mr. Kelly.*

[For second reading.]

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[For third reading.]

To exempt stock-in-trade and other personal property from being liable to be rated to the relief of the poor. *The Attorney General.*

[In Committee.]

Affirmations.

[For second reading.]

Marriages Act Amendment.

[In Committee.]

Masters in Chancery.

[Passed.]

THE EDITOR'S LETTER BOX.

BESIDES the series of papers on Railways and other Joint Stock Companies, lately commenced, we shall endeavour each month, or perhaps oftener, to give a Law Tract on some useful subject.

The letters of "Paul," "Lex;" and "Junior," shall receive early attention.

The Vacation Article from our learned friend C., is acceptable.

We cannot sufficiently thank our correspondents for their recent assistance.

The communications of several articulated clerks, relating to the examination, shall be attended to.

We are obliged by the information relating to the last Chancery Returns.

H H. is informed that an attorney or solicitor of the Superior Courts, for the purpose of becoming a solicitor in the Court of Bankruptcy, must take the oath in the Court of Review, and sign the roll at the Bankruptcy Court. The expense is one shilling for the oath, and five shillings for the admission.

"A City Clerk" is anxious to attract the immediate attention of the profession to the hours of attendance at solicitor's offices, in order that the clerks may feel the benefit of the alteration in the *present vacation*. It is suggested that the general time for closing should be *six o'clock*.

LEGAL OBITUARY.—On the 19th June, after a short illness, at his residence, Hampstead, William C. H. Lawes, Esq., Barrister at Law, Inner Temple, whose benignity and integrity of character endeared him to all who knew him.

Lately, at Aveley, Essex, aged 79, James Aubrey, Esq., for upwards of half a century practising as an Attorney and Solicitor in London.

The Legal Observer.

SATURDAY, JULY 11, 1840.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE RESULTS OF THE SESSION.

THE Session, which began earlier than usual, will now soon close; and we fear we shall not be able to point to a single measure of importance which has been passed into law during its progress. Much has, indeed, been projected: that is, the measures which were brought forward last year, and were last year postponed, have been brought forward this year, and have been this year postponed. Some have got a little further than they did last year,—some have not got so far,—but the result is the same: nothing has been or will be done. Now we do consider this a state of things which is most grievous; and we want words to express our deep sense of the injury which is thus inflicted on the public. Not only are questions on which doubt exists thus suspended, but measures on which no doubt exists, and as to which all parties are agreed, are no better off. There are two instances of this of prominent interest.

The first is the Bill for improving the Administration of Justice in Equity. That question was discussed last Session: it was admitted on all hands that the present state of things was not to be endured; that the remedy was simple, and might easily be applied. All this was admitted last Session; all this has been also admitted this Session; and what has been done? A Bill has been introduced: it has been referred to a Select Committee; this Committee has sat, and several witnesses have been examined; but is there a reasonable expectation of the Bill getting through both Houses in the present Session? We shall rejoice to be informed that there is; but we much fear that there is but little hope of it, although we don't yet quite despair.

The other is the Copyhold Enfranchisement Bill. Last Session this Bill passed the House of Commons: it was discussed in the House of Lords. The principle of the Bill was disputed by no one; but it was postponed to the present Session, in order that its details might be fully inquired into. It was brought into the House of Lords early in the present Session, and was referred to a Select Committee. We do not know whether that Committee has ever sat, and certainly we do not know the result of their deliberations,—except that another Bill has been introduced, embodying much of the first Bill, but which has never been proceeded in; nay, has not been read a second time. Now we are not disposed to blame any one in this state of things, because we know not who to blame; but we do deplore the present condition of parties, which thus renders the omnipotence of the legislature an empty mockery, and which impedes and obstructs all remedy for grievances, however great, or however universally acknowledged.

Among other measures which have also been repeatedly before Parliament is that of the Copyright Bill, which Mr. Serjeant Taftour has again been obliged to postpone.

The session will thus close without any results. It will hardly, however, be permitted to come to an end without a Regency Bill being passed. We adverted to this question in a recent number (*ante*, p. 65), and it will probably engage our attention on some future occasion. We do not at present see any reason to alter the opinion as to it which we have expressed; yet we are willing to think that the precedents to which we referred are not entirely conclusive, although entitled to great weight.

O

PRACTICAL POINTS OF GENERAL INTEREST.

SEDUCTION.

A PARENT, or one *in loco parentis*, may, under certain circumstances, maintain an action for the seduction of his daughter. Formerly this action was held not to be maintainable without proof that the relationship of master and servant existed, the gist of the action being—not the seduction, but the supposed deprivation of the labour or services, of the daughter; and, although the child be not under the roof of the parent at the time of the seduction, yet if she be a minor, and is only casually absent on a visit, with an *animus revertendi*, this will be sufficient, as, in such cases, the implied relationship of master and servant is continued. *Dean v. Peel*, 5 East, 47; but when she is actually in the service or apprenticeship of another, the action cannot be maintained, even though the master be the seducer; *Harris v. Butler*, 2 Mee. & Wels. 539; 15 L. O. 82, unless the wrong be done under the colour of a contract. *Speight v. Olivera*, 2 Stark. N. P. C. 493. But a constructive service must be proved in all cases, *Maunder v. Venn*, Moo. & Mal. 323. These rules were acted on in a recent case, which has already been reported by our own reporter, 19 L. O. 416, and subsequently by Messrs. Meeson & Welsby, vol. 6, p. 55, in which it was held that an action cannot be maintained by a father for the seduction of his daughter, while she was in the domestic service of another person, although it be alleged in the declaration that she was there with the intention, on the part of her father and herself, that she should return to her father's when she quitted her service unless she should go into another service. "That averment," said Mr. Baron Parke, "was evidently inserted for the purpose of shewing an *animus revertendi* in the daughter, and so assimilating this case to those in which actions have been held to lie for the seduction of a girl while on a visit to a friend. (*Booth v. Charters*, and *Johnson v. M'Adam*, cited 5 East, 47). But this case is very distinguishable from those; here the girl was in the actual service of another person, and her intention was not to return at any definite time to her father's

house, but only on her dismissal from her service, and in the uncertain event of her not going into another service. That an action for seduction will not lie under such circumstances, has been expressly decided in *Dean v. Peel*, 5 East, 45. In order to sustain this action, there must be *damnum et injuria*. The plaintiff not having shewn any right to the services of his daughter at the time of the seduction, there is here *damnum absque injuria*. A mere temporary absence, undoubtedly, would not be sufficient to defeat the action; but that is very different from a continued and regular service."

As to what damages may be recovered in an action for seduction, see 15 L. O. 306.

NECESSARIES FOR INFANT.

An infant may enter into a binding contract, either by simple contract or single bill, to pay a reasonable price for necessaries; viz., meat, drink, apparel, physic, and such other things as are necessary to his comfort, and proper to the station he holds in society. Co. Litt. 172, and *Maddon v. White*, 2 T. R. 159; 4 Camp. 164. The whole of the cases on this subject turn on what is or what is not to be deemed *necessary*. This, according to the present rule, "is that which is *bona fide* purchased for use, and not merely for ornament, and which consorts with the condition and rank in life in which the party moves." Per *Alderson and Rolfe*, B.B., 6 Mee. & Wels. 48. And the question as to what are and what are not necessaries will be left to the jury. In a recent case the question was, whether the son of a gentleman of fortune and a member of parliament was liable for the following articles supplied to him: A fine gold ring, 1*l.* 8*s.*; a ring, engraved crest, &c., 1*8*s.**; a short gold watch chain, 2*l.* 2*s.*; a pair of pins, 1*8*s.**; a ring, 1*l.* 6*s.*; a ring 1*l.* 5*s.*; a ring repaired, new stone, 3*s.* 6*d.*; making together 8*l.* 0*s.* 6*d.* And the following was the opinion of Mr. Baron Parke on the point, which was confirmed by that of the other learned Barons. "It seems to me that in this case the learned judge could not have been properly called upon by the defendant to nonsuit the plaintiff, and that there was some evidence to go to the jury in support of the allegation in the replication, that the goods were,

at the time of the sale and delivery thereof, 'necessaries suitable to the then degree, estate, and condition of the defendant.' The decision of this question does not depend in any degree upon any allowance the defendant may have had from his father, and which he may have mis-applied; that must be considered as settled by the case of *Burghart v. Hall*, 4 M. & W. 727; but the question is, whether the articles furnished are properly such as are necessary and suitable to the station, degree, and condition of the defendant. It is perfectly clear, that from the earliest time down to the present, the word 'necessaries' was not confined, in its strict sense, to such articles as were necessary to the support of life, but extended to articles fit to maintain the particular person in the state, station, and degree of life in which he is; and therefore we must not take the word 'necessaries' in its unqualified sense, but with the qualification above pointed out. Then the question in this case is, whether there was any evidence to go to the jury that any of these articles were of that description. I think there are two that might fall under that description; viz. the breast-pin and the watch-chain. The former might be a matter either of necessity or of ornament; the usefulness of the other might depend on this, whether the watch was necessary; if it was, then the chain might become necessary itself. Now, it is impossible for us to say that a judge could withdraw it from the consideration of the jury, whether a watch was not a necessary thing for a young man at college, and of the age of eighteen or nineteen, to have. That being so, it is equally, as far as the chain is concerned, a question for the jury: there was, therefore, evidence to go to the jury. The true rule I take to be this,—that all such articles as are purely ornamental are not necessary, and are to be rejected, because they cannot be requisite for any one; and, for such matters, therefore, an infant cannot be made responsible. But if they are not strictly of this description, then the question arises, whether they were bought for the necessary use of the party, in order to support himself properly in the degree, state, and station of life in which he moved; if they were, for such articles the infant may be responsible. That must be a question for the jury, and it is for

them to decide, upon due consideration, whether the articles were of such a description or not, and here the jury have found that they were. It is impossible to say there was not some evidence to go to the jury in the present case; that being so, it becomes unnecessary for us to inquire as to the other matters charged for." *Peters v. Fleming*, 6 M. & W. 42.

LAW AND PRACTICE OF EJECTMENT.—No. I.

COSTS IN SECOND ACTIONS.

WE purpose submitting to our readers a short series of articles on the Law and Practice of Ejectment. Since the abolition, by the 3 & 4 W. 4, c. 27, of all real actions, except Ejectment, *Quare impedit*, and Dower, the action of Ejectment has become of increased importance; and it will be useful to notice the recent decisions relating thereto, accompanied by a general but concise statement of the law to which such decisions relate.

Without pursuing any elaborate method, we shall, for the present, treat of the rules applicable to second or new trials in actions of Ejectment.

According to the former state of the law, one of the supposed advantages attending the action of ejectment was, that a man might try the question as often as he pleased, (10 Mod. 1.) But this sometimes proved a very great mischief, and after several ejectments, a bill of peace was sometimes filed in Chancery, to establish the prevailing party's title. Where the suit began in Chancery for relief touching incumbrances, and that Court ordered the defendant to pursue an ejectment at law there, after one or two ejectments tried, and the right settled to the satisfaction of the Court, it ordered a perpetual injunction against the defendant. It seems that the distinction made as to the originating of the proceedings at law or in equity, does not obtain at present; and courts of equity will grant a perpetual injunction in either case, after repeated trials, and a satisfactory determination of the question. See *Earl of Bath v. Sherwin*, 1 Br. P. C. 217; *Barefoot v. Fry*, Bunb. 158; *Leighton v. Leighton*, 1 P. Wms.; *Goodright v. Hurwood*,

Proceedings at Law," which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said statute of Queen Elizabeth; but the same evil, notwithstanding, doth still prevail and increase, and it is expedient to make further provisions for the prevention thereof: Now be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, that the said recited act of the forty-third of Elizabeth, so far as it relates to costs in actions of trespass, or trespass on the case, and so much of the twenty-second and twenty-third of Charles the Second as relates to costs in personal actions, be and they are hereby repealed.

2. *Costs not to be recovered in action of trespass, or of trespass on the case, where damages recovered are less than 40s., unless upon judge's certificate, &c.*—And be it enacted, that if the plaintiff in any action of trespass, or of trespass on the case, brought or to be brought in any of her Majesty's courts at Westminster, or in the court of Common Pleas at Lancaster, or in the court of Common Pleas at Durham, shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record, or on the writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

3. *Act not to extend to deprive plaintiffs of costs in actions for trespass.*—Provided always, and be it enacted, that nothing herein contained shall extend to or be construed to extend to deprive any plaintiffs of costs in any action or actions brought for a trespass or trespasses over any lands, commons, wastes, closes, woods, plantations, or inclosures, or for entering into any dwellings, outbuildings, or premises in respect of which any notice not to trespass thereon or therein shall have been previously served, by or on behalf of the owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the defendant or defendants in such action or actions.

In the bill on which this act is founded, it was proposed to take away the costs in all *personal* actions, where less than 40s. was recovered; but the act as passed applies only to actions of trespass and trespass on the case. The power given to the judge to certify must be exercised *immediately* after the trial.

BAD POLICY OF THE PARTIAL REPEAL OF THE USURY LAWS.

A pamphlet with the above title "By a Lawyer" (published by J. S. Hodson, Fleet Street,) points out the ill effects of the repeal of the usury laws on bills, notes, &c.

"The principal arguments (he says) brought forward in support of this measure were, that it would facilitate the circulation of money, and be more beneficial to borrowers, and consequently to trade and commerce, than the expensive mode of granting annuities, or the taking of goods at exorbitant prices in part upon discounting bills—evils no doubt of great magnitude. But those transactions were watched with suspicion, and frequently set aside as mere evasions of the law; and were comparatively of limited amount."

He then proceeds to discuss the two principal questions.

"First, with respect to the *increase of the circulation*. When it is considered how many actual usurers and extortioners existed before the first partial repeal, and how many more would have existed but for fear of the law; does it require much sagacity to prove that these persons immediately after the first partial repeal in 1834, commenced their well-organized operations against their fellow-men, and have continued them to the present moment.

"Each of the money lenders collects and hoards his money in his strong box, or at his banker's, for the purpose of using it in discounts upon exorbitant terms, varying from twenty to fifty per cent. and often much higher. They accumulate their respective hoards in preference to paying their own lawful engagements, or investing their money in the usual modes of trade or commerce, or of advancing it in the ordinary way. Some have their hoards to the amount of 10,000*l.*, some more, some less, but every one to a considerable extent.

"This system, injurious and discreditable as it is, has now extended itself to the most respectable merchants and bankers, and even to the Bank of England itself, who are driven by this law, and the practice arising out of it, to adopt the same system of extortion, although not to so great an extent, in their own defence. Even clubs are now formed all over the town, for raising money amongst the members to lend upon exorbitant terms; and the whole kingdom forms, as it were only two classes, namely, the plunderers and the victims; whereas, if the repeal laws had not passed, all, except the old determined, systematic, and shameless usurers—the *Ralph Nickleby's*—would have lent their money, nay, and freely too, at 5*l.* per cent., and been satisfied with it, or they would have circulated it in trade or commerce.

"The result of the present system is, that, although no one can calculate the aggregate amount of the several hoards, money to an

enormous extent is kept idle and unproductive, which would otherwise have come into circulation. If any one doubts the truth of my assertions, let him inquire among the trading classes and professional men, and, indeed, of any persons, except those who are base enough to live upon their neighbours' necessities, and he will be convinced of the ruinous scarcity of money. The names of some of these wretched men have come to my knowledge, and I should feel little difficulty in holding them up to public execration; but as they are now sanctioned by the unwise law I have referred to, there would be little use, and perhaps some hazard, in doing so.

"It seems to me undeniable that, instead of increasing or facilitating the circulation of money, the effect has been directly the reverse; and it is by no means an exaggeration to assert, that in the aggregate, taking the whole kingdom, the amount constantly kept out of circulation cannot be less than several millions. It is acknowledged on all hands that there is, and has been for some time, an awful scarcity of money amongst all classes; and I am satisfied that the repeal of the usury laws is the principal, if not the sole cause."

The writer then, for the sake of argument, admits that the repeal does facilitate or increase the circulation of money; and asks, secondly—Whether it does so *beneficially* to the public?

"I can perfectly well understand that if a person has a speculation, or a new invention on hand, from which if successful, he is likely to derive very large profits, it may answer his purpose to pay the large rates of interest which the money-lenders are in the habit of demanding; but how few, comparatively, are these cases to the numbers requiring money accommodation. Ninety-nine in every hundred persons, who apply for accommodation, consist of regular tradesmen, and men engaged in some professions, respectable men,—the great stay, in fact, of the nation,—and bearing the greatest burthen of the state; struggling against the tide, and endeavouring to preserve their credit, and conceal their distresses, they submit to impositions, which, under other circumstances, they would not think of doing, until their whole substance is absorbed, and nothing is left for their more honest creditors; their profits, which should have gone to maintain their families, capital and all, are gone into the coffers of the infamous usurer. And it is frequently made a charge against them, in case they become insolvent or bankrupts, that they borrowed money at so ruinous a rate. Nor do I say that they are altogether free from blame in that respect; but when a man submits to such impositions, he never does it willingly, and always in hopes of being able, by making the sacrifice, to weather the storm, and get over his difficulties. Few men have nerve enough to stop in time, and peremptorily resist even a relief of that ruinous kind—they submit to it rather than expose the state of their circumstances to their friends. To lay the

blame upon the poor borrower, appears to me most unjust. The blame should be more properly fixed upon those, who, devoid of all feeling, except the love of gain, extort from their victims such heavy discounts. Will any tradesman tell me that he can afford, out of his fair and legitimate profits, to pay twenty, twenty-five, thirty, and upwards, per cent., for the use of money?—It is absurd to suppose it. Yet is it not notorious that these sums, and much greater, are demanded, and paid, for money accommodation; and if that is so, is it not plain that, even if the repeal of the usury laws does facilitate or increase the circulation of money, which I think I have shewn is far from being the case, it does so upon terms that, instead of being beneficial to the public, are absolutely ruinous.

"It is a great mistake to suppose that money is like any other marketable commodity. Stock may be, but money is not. Marketable commodities are purchased "out and out;" and persons requiring them, go to the shops which will serve them upon the best terms, and with the best article—and the article is not to be returned, but becomes the property of the purchaser. But if a man wants money, he is very fearful lest any persons should know it; he conceals his wants from the world, and flies to those from whom alone he can obtain it, and is consequently forced to submit to any terms, however unreasonable or unjust. Besides, he borrows the money—he does not purchase it, but has to return it by a given time, or dread the cruel and bitter consequences. In short, to save his credit, he submits to the terms imposed, and becomes the easy victim of the usurer:—he conceals first his want of money, and afterwards conceals the fact that he has been weak enough to submit to being plundered with his eyes open. The sequel can be better imagined than expressed."

NOTES

ON THE LEGAL EXAMINATION.

BY A BYSTANDER.

In the neighbourhood of the Temple are many of those respectable lodging houses, which are so convenient for country gentlemen of the law, during their occasional visits to London. In the common room of one of them, the scene of our labours is primarily laid, but we shall take the liberty of shifting the scene, and of disregarding the unities of time and place, as may be most agreeable to convenience or caprice.

It was evident from the appearance of the young gentlemen there assembled on the day previous to a legal examination (but whether the first, or the last, or any other, it is unnecessary to mention,) that business of the greatest importance had brought them to town.

Although they were strangers to each other,

they were evidently in pursuit of one common object. Covered by the hat of one, was a Common Law Book of Practice—a work on Conveyancing—and another on Wills. Next to that was the Articled Clerk's Manual; and in each of the four corners of the room, some one or more of the above might be found with a Chancery Practice, "the book" on Powers,—somebody on Mortgages, and a variety of others which had been more or less in requisition during the course of the day.

These embryo lawyers, (for such in reality they were) had merely exchanged the ordinary civilities, until one of them of the name of Singleton, addressing himself to a stripling of two-and-twenty, of the name of Gabriel Newton, asked him if he came to be plucked. The latter did not understand the expression, and therefore requested Singleton to explain himself; which he did by enquiring if he had come up to be examined; but before the answer was given, the door opened, and in came three other of the gentlemen:—Mr. Neverton, Mr. Ready, and Mr. Neverfear, who had accidentally met at the front door, and interrupted the colloquy, by at once declaring that they had all come on the same errand, and the conversation soon became free.

It should be said that Gabriel Newton was not only the junior of the party, but the pride and hope of a widowed mother and two lovely sisters, from one of whom he had that very morning received an affectionate letter, entreating him "not to be over anxious," assuring him, that "all would go well" and that she was sure he would pass. This advice he was vainly attempting to follow, but it was impossible; the result of the examination would bring with it too much of happiness or disappointment to those he loved, to be regarded otherwise than with the most intense anxiety, which the letter had increased rather than diminished, and at the very moment when Singleton's eye was again directed towards him, Gabriel involuntarily exclaimed, "I wish she had not written." This was enough for the light-hearted Singleton, who somewhat rudely assured his new friends that Mr. Newton had had a letter from his favorite, who would not grant him the first favor till he had passed his examination.—Gabriel denied this, and with genuine simplicity assured them the letter was from his sister. Singleton, however, affected to disbelieve him, declaring, that if twenty sisters had written to him he could not have pulled such a long face.—Gabriel was silent.

Neverton, who was a much more steady personage than Singleton, though at the same time not so desponding as Newton, addressed himself to Mr. Neverfear, asking him if he expected to pass, and what course of study he had been pursuing? Neverfear, who appeared much surprised at the first branch of the enquiry, replied that "he assuredly did, or he should not have come up;" and to the second that he had got the Statute of Wills by rote, had looked into Sugden, read a Chancery Practice twice over, and twenty other books which he had quite forgotten, in addition to

which he had read three hundred pages of Archbold since Saturday, and, as we thought, impudently said, he was quite a match for the Examiners themselves. Newton heard this with surprise, every book that Neverfear had named, and fifty others, he had anxiously studied, but was unhappily oppressed by the idea that the very books he had *not* read would prove to be those he ought to have read.

Singleton declared that he had read as much as opportunity and inclination would let him, but that he had much rather go a hunting blindfold than go up to be examined without first knowing the questions he should be asked. It was tantalizing a fellow unnecessarily, and he thought that instead of having seventy-five questions, some of which would puzzle a Lord Chancellor, to be answered at sight, it would be better to publish three hundred questions prior to each term, afterwards dividing them into three lists, one to be given to each candidate on entering the Hall, or Sweating Room, as he chose to call it, and requiring two-thirds in each department to be correctly answered in the candidate's own words.

To this, Neverfear, Ready, and Neverton assented, but Newton was too much engrossed by the present plan to think of any other.

Ready said, he had adopted a better plan than Mr. Neverfear's, that is to say, he had not learnt his law by rote, but had got it at his finger's ends, where, as the examination would be in writing, he sagaciously observed, it would be most wanting.

It would have puzzled Mr. Gurney and his establishment to note down all that followed. Suffice it to say, that it was at length unanimously agreed they should all breakfast together the following morning, and then proceed to the Hall with the best grace they could.

Fastidious persons (and there are thousands in the world) will probably consider our remaining in the room as decidedly improper, especially when we state that we have passed the juvenile age of fifty-four; but we have always despised humbug in every shape, especially that of fastidiousness, and therefore particularly addressing ourselves to all fastidious persons, we had a *right* to be there, and were determined to exercise it. We saw that something was going on differing from the ordinary wear and tear of every-day life, and, although personally uninterested, we were not unconcerned, for we felt an interest in the success of Gabriel Newton. For this purpose therefore, we not only staid till the very last, but determined to join the party at the breakfast table the following morning, where all our readers may soon expect to find us.

PRIZES AT THE EXAMINATION.

We understand that several of the Examiners, including some of the Masters of the Common Law Courts, are favourably disposed towards the proposal of awarding prizes to the candidates who stand first and second in point of excellence. We therefore insert the following communication on this subject:—

It is but natural for an articled clerk who has to spend so much of his time in preparation for his examination, to complain, that however creditably he may pass his examination, he is to be excluded from receiving any token of merit, and to be classed with those whom the Examiners scarcely think deserving of being allowed to pass at all: and more especially so when he sees the labours of the medical and other students rewarded according to their deserts.

The law students are the only ones who are without an opportunity of distinguishing themselves, and gaining the credit from their friends which acknowledged merit always receives. Even if it were not thought proper to give a medal or books, or other prizes to the student who had passed his examination to the greatest satisfaction to the Examiners, surely there could be no objection to give certificates of merit, as is done in all the classes at the London University, as well as giving them prizes.

This would, there can be no doubt, be a very great stimulus to the law students, and it is but following up the principle of the examinations. There cannot be a doubt, either, that it would tend very much to raise the character of the profession. Why, then, delay any longer carrying out this improvement? I do not know on whom the making of this improvement rests, but whoever it may be, the reasonableness of the thing is so plain that there could (if brought forward in a proper manner) be no objection to try the experiment.

It costs each examinant 30*l.* before he can be admitted; and surely out of this some fund might be set aside for the purchase of books, or any other marks of esteem it is thought proper to award to those who have passed their examination most creditably.

I am an articled clerk, and though I am anxious to make myself master of the law, without reference to my examination, yet, if I knew that my industry would be rewarded, it would make a very material difference, for I should then try to pass creditably, and with as much honor as possible, knowing, as I should, that it would be a pleasure to my friends, and would in no inconsiderable degree enhance my future prospects.

AN ARTICLED CLERK.

SELECTIONS
FROM CORRESPONDENCE.

POLICE MAGISTRATES' DECISIONS.

A. appears before a magistrate under a false charge of assault; but the magistrate believes it true, and summarily adjudicates that *A.* must find sureties to keep the peace for six months, and give twenty-four hours' notice; but on the following day *A.* finds the decision altered in his absence, and unknown to him, that he shall find the same sureties to appear at the sessions to answer any indictment that may be preferred against him; thus giving the party an opportunity to put *A.* to further trouble, inconvenience, and great expense.

To this altered decision in *A.*'s absence, and without his knowledge and consent, *A.* objected, and protested against it in the presence of his bail, but he was told he must consent or return to prison until the sessions commenced; and he was consequently compelled to submit. The party indicted *A.* on the false charge at the sessions; he met the trial and was acquitted. He afterwards indicted the party for conspiracy—they met the trial and were found guilty.

If the magistrate's decision had not been altered, *A.* would have had only to prosecute for conspiracy.

Had the magistrate the power to alter his decision unknown to *A.* and his bail? If he had not, is he liable to it for the expense and inconvenience he was put to in defending a prosecution which could not have taken place had the summary decision remained unaltered?

SCRUTATOR.

ATTENDING SUMMONSES BY JUNIOR CLERKS.

It has often occasioned surprise in my mind that inexperienced junior clerks should be entrusted with an important, though non-remunerative part of common law practice:—I refer to attending summonses before a Judge at Chambers, in many cases of infinite moment to the interest of the client, although unguardedly supposed to be mere matter of course applications. An instance of the kind was brought before the Court of Exchequer, where I happened to be attending, illustrative of my views. It appeared by the statement of counsel that the defendant had taken out a summons to plead several matters to a declaration on a bill of exchange, and his first plea was denial of the acceptance, which a learned Baron at Chambers disallowed. The cause was tried and a verdict found for the plaintiff. Now the effect of the pleadings, as they appeared upon the record was, that the plaintiff was not under the necessity of producing the bill; and upon the application for a new trial, some important facts were stated which would justify the counsel in inferring that had not the plea been disallowed, the plaintiff would not have recovered.

The learned Baron said he remembered the circumstance, and that the summons was attended by some person who knew nothing whatever of the cause, and could not answer the question he put why it was wished that the plea should be upon the record, and he therefore ordered it to be struck out: the consequence is, that the defendant has lost the cause, and he is refused a new trial.

W. W. E.

CHARGE FOR SEARCHING FOR JUDGMENTS.

"A Reader" states that in making a general search for judgments at the Queen's Bench Office, they charge, besides the 2s 6d. fee for search, 6d. for every name you extract, and justify the charge under the 14th division of the Table of Fees, considering every name, &c you take a minute of, as a folio, and an extract made by them, although they do not do it; and the Common Pleas and Exchequer only make the general search charge 2s. 6d. It is a question of some importance when you have to search a common name, such as John Jones, living in London or its suburbs, you may have to take minutes of fifty of that name, perhaps not one of whom is the person you are searching for or against. Can any of our readers say if such a charge is justifiable, and if so, why the Courts differ in it?

SWEARING AFFIDAVITS.

The inconvenience sustained by the profession in dancing attendance at Westminster and at the Judges' Chambers, to swear affidavits, is so great, that I am induced to hope an application will be made in the proper quarter to enable solicitors and others to depose to affidavits before members of their own profession, as is practised in the country. I have recently had two attendances at Westminster, and a third at chambers, the former at a distance of some three miles from my place of business.

CIVIS A.

SUPERIOR COURTS.

Lord Chancellor's Court.

NUNCUPATIVE LEGACY.

A sum of money paid in respect of a verbal direction of a dying person is not a discharge of a legacy of like amount, given to the same party by the same person's will; nor can it be recovered or set-off against the demand of the latter legacy, there being no mistake or misapprehension of law on the part of the person paying.

Mr. John Eason, of Bridge Farm, near Taunton, Somersetshire, by his will, dated in 1816, gave, among other legacies, one of 1000*l.* to Dr. William Metford, in case Miss Elizabeth Eason, testator's sister, to whom he gave power of disposing of all his large property, both real and personal, should not make any disposition

of the same. He died in 1817. Miss Eason took possession of the property, and made her will in 1828, by which, after giving some legacies, she gave the whole residue of her property to Mr. John Weston Peters, subject to the legacies given by her brother's will, and she appointed Mr. Peters her executor. She afterwards made several codicils to her will, and in the year 1830, on the 13th of July, late at night, considering that she was going to die, she desired Mr. Peters to be sent for. He came, and, in his presence, and in the presence of Dr. Kinglake and Mr. Nicholetts, Miss Eason's medical attendant and solicitor, and also in the presence of her servants, she said to Mr. Peters—"Give Dr. Metford 1000*l.* and Mr. Nicholetts 500*l.* more than I have given by my will," or words to that effect, for the witnesses differed as to the exact words used. She lived afterwards to make a codicil to her will, but she made no mention of this legacy to Dr. Metford. Soon after her death Mr. Nicholetts, the solicitor of Mr. Peters, by his direction, wrote to Dr. Metford that by the verbal direction of Miss Eason he had to pay him 1000*l.*; that there had been a legacy of 1000*l.* left him by Mr. Eason's will; but that legacy was not valid, as appeared on examination of the wills of Mr. and Miss Eason. Dr. Metford met Mr. Nicholetts by appointment, and receiving a cheque for 900*l.* (the other 100*l.* being retained in respect of the legacy duty) he gave a receipt for it, expressing it to be received by him in respect of the legacy given to him by the verbal directions of Miss Eason; and he told Mr. Nicholetts at the same time that he would claim the other legacy under the will. He accordingly filed his bill against the residuary legatee and executor in 1834. The Vice Chancellor made a decree, declaring the plaintiff entitled to the legacy of 1000*l.* under Mr. and Miss Eason's will; but referred it to the Master to inquire and state whether the legacy mentioned in the wills had been paid to the plaintiff, with liberty to state special circumstances. The defendant appealed from that decree to the Lord Chancellor, who, however, affirmed the declaration as to plaintiff's right to the legacy under the will, but varied the terms of reference to the Master by substituting the words "for what purpose and under what circumstances the 900*l.* was paid to plaintiff." The Master reported that it appeared to him on the evidence produced to him that the 900*l.* was paid in respect of the verbal legacy. Exceptions were taken by the defendant to the report, and they were overruled by the Vice Chancellor. The matter now came before the Lord Chancellor on petition of appeal from the Vice Chancellor's order, overruling the exceptions, and also on further directions.

Mr. Wigram, for the defendant.—There was no doubt that the nuncupative legacy was void, and Mr. Peters was not bound to pay it. The payment made was in discharge of what was properly left to the plaintiff. Even in the words spoken by Miss Eason, it was doubtful whether she meant to give the plaintiff any more *l.*

was given by the will. Some of the persons present believed the words to be: "Give Dr. Metford 1000*l.* and Mr. Nicholetts 500*l.* more than I have given by my will," which collocation of the words would give an additional legacy to Mr. Nicholetts, and not to Dr. Metford. She had not given Dr. Metford any legacy by her will; her brother had. She afterwards made a codicil to her will, but said nothing about this additional legacy to Dr. Metford. It could not be her intention that he should have more than one legacy of 1000*l.* Mr. Nicholetts was three times examined. The Master excluded his last examination from his consideration in making his report, considering that the true state of the facts appeared in the answer and exceptions filed in 1837. The legacy given by Mr. Eason's will was conditional upon Miss Eason's not disposing of the property, but she did exercise the power of disposing of it, and therefore Mr. Peters and his solicitor thought the 1000*l.* given by the will void, and in point of honor they paid him the verbal legacy, which the executor was not bound to pay at all. If he was in ignorance or under misapprehension of his liability, he ought not to be bound by this act, and the sum so paid ought to be returned or set-off against the legacy, which is now declared to be valid. The case of *Stockley v. Stockley*,^a before Lord Eldon, contains strong expressions to the effect that a party ought not to be held bound by an act done on an erroneous supposition of right. Expressions to the same effect are found in *Bingham v. Bingham*,^b *Landourne v. Landourne*,^c shewing the doctrine to be that if parties do an act under a mistake of their rights, this Court will relieve them, and in *Naylor v. Finch*,^d Sir John Leach, V. C. in his judgment says: "If a party acting in ignorance of a plain and settled principle of law, is induced to give up a portion of his indisputable property to another under the name of compromise, a Court of Equity will relieve him from the effect of his mistake. Mr. Peters here paid part of his property under misapprehension of the principle of law that the nuncupative legacy was void. [The Lord Chancellor.—It appears by the letter of his solicitor as if he said: I pay you this 1000*l.* as it is clearly given: but I will dispute your right to the other 1000*l.* legacy.] That is the point; he paid in misapprehension of his right; the legacy was paid on the supposition that it was due.

The Lord Chancellor.—Suppose there was no other legacy, and that he paid this verbal legacy under the impression that it was due, he could not get it back. But it appears he paid it by his solicitor, which implies that he paid it knowingly.

Mr. Wakefield and Mr. Bacon, for the plaintiff.—The defendant knew the nuncupative will was not valid; and he excluded it from probate. The words spoken by Miss Eason, taken as represented by Dr. Kinglake, who took a note of them as well as Mr. Peters, or

as represented by any of the persons present, conveyed a clear direction to pay Dr. Metford 1000*l.* more than was given by the will; and Mr. Peters, afterwards remembering what was the meaning and clear intention of his benefactress (he had a large property from her) paid the 1000*l.* according to her directions, reserving the question as to the other 1000*l.* to be decided by law. There was no ground whatever for the exceptions, which went chiefly against the evidence of Mr. Nicholetts' letters being read before the Master.

The Lord Chancellor.—The question is, whether the verbal legacy has been properly paid, the other legacy of 1000*l.* mentioned in the wills of Mr. and Miss Eason being still subject to the objections to other legacies mentioned in the wills. The plaintiff's title upon the statements in his bill and in the pleadings is clear, unless these statements are met by counter proof. The defendant says the plaintiff is not entitled in Equity to more than 1000*l.*, and that that sum has been paid to him. In order to judge of the exceptions to the report, it was proper to look at the evidence before the master, and to that only. It appears that the defendant had the advice of his solicitor from the commencement, and there was not a trace in the evidence of his having acted under any misapprehension. And as a residuary legatee as well as executor, the defendant had more controul over the estate than a mere executor could have. By his direction Mr. Nicholetts writes to the plaintiff, saying in substance that Mr. Peters left with him a cheque for the plaintiff in payment of the legacy given by the verbal directions of Miss Eason, a few hours before her death &c, that he had supposed that another legacy had been given to plaintiff by the will, but in looking over the papers he found that such was not the case &c. It was impossible to read that letter and not to see that the 1000*l.* paid was wholly independent of the will; and Mr. Nicholetts' third examination, saying that the payment was connected with the other legacy, and meant to be in discharge of the whole claim, cannot now be heard. Taking Mr. Nicholetts' depositions together, the effect of them is that when he was paying the verbal legacy, he was then informed by the plaintiff that the plaintiff meant to claim the other 1000*l.* Then it was the duty of Mr. Nicholetts to get the receipt for all, if that payment was in discharge of all claims; but all he said was that he would inform Mr. Peters that the plaintiff would insist on the other 1000*l.*, making no reference to the payment made being in discharge of that legacy and in full of all demands. It was quite impossible on these depositions to connect the one payment with both legacies, or to say it was in satisfaction of all demands. There was no misapprehension or mistake; the defendant had the advice and assistance of Nicholetts, the solicitor of the defendant; he paid the 1000*l.* in respect of the verbal legacy, knowing at the time that plaintiff made a further demand of the legacy given by the will. If the defendant cannot re-

^a 1 Ves. & B. 23.

^b 1 Ves. sen. 126.

^c Mosely, 364.

^d 1 Sim. & S. 364.

cover back that money, he has no defence to this bill. The object of the reference to the master was to see if the circumstances under which the 1000*l.* was paid, would constitute any defence. The master reports that it was paid in satisfaction of the verbal directions of the testator. The chief objection to that report was, that Mr. Nichollett's last examination was excluded. If it was different from his first statement, it was properly excluded. Another objection was that two letters were received in evidence by the Master, but which ought not to be received. Now these were the letters of defendant's solicitor, and they come from the party himself, and could not be excluded. The answer did not raise the question which was raised by the exceptions, namely, that the 1000*l.* was paid in satisfaction of all demands. The facts stated afford no defence to the suit: the exceptions must be overruled. As to the further directions, the decree of the *Vice Chancellor* is, that under the will of John Eason, the plaintiff became entitled upon the death of his sister to 1000*l.* I have not altered that decree. Her will was not necessary to give effect to the legacy, but she did give effect to it by giving the residue to defendant, subject to the legacies given by her brother's will. As to costs the defendant is to pay all the costs of the suit, except of the former appeal from the order of reference, in which the defendant succeeded in getting that order varied here.

Metsford v. Peters, Sittings at Lincoln's Inn, July 1, 1840.

PRACTICE.—TENANT PUR AUTRE VIE.—PRODUCTION OF CESTUI QUE VIE.

The holder of an estate, or of a charge on it, must, under the act 6 Anne, c. 18, produce to the owner or reversioner the person for whose life he holds it, once a year, if so ordered by the Lord Chancellor; and the Lord Chancellor will make such order upon motion, and affidavits that the reversioner believes the person to be dead, and that the death is concealed. And the place of production will be the next parish church to the residence of the cestui que vie, as described in the instrument forming the holder's title, within a given time.

Mr. Denman *Whatley* moved for an order (according to the act 6th Anne, chap. 18, "An act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths,") on the holder of a charge on a freehold estate for certain lives, to produce those lives to the owner of the estate. He had an affidavit on the part of the owner, stating his belief that those persons were dead, and that their deaths were purposely concealed by the tenant *pur autre vie*. In the instrument by which the charge had been granted, the persons (four in number) for whose lives it had been so granted, were described, as to two of them, of Camden Town; and as to the other two, of Tottenham Court Road. The learned

counsel stated that he believed the usual course in this matter was to make the order on the tenant for life to produce the lives at the next parish church to their residence, as so described, within a given time.

The *Lord Chancellor*.—Let the order be to produce them at the next parish church, within four weeks.

On a subsequent day Mr. *Whatley*, referring to his former application, said, Camden Town and Tottenham Court Road were all in one parish, which, however, had several churches, all of them parish churches.

The *Lord Chancellor* desired the order to be made for producing the lives at St. Pancras church.

In the matter of *Packwood*.—Sittings at Lincoln's Inn, June 24 and July 1, 1840.

Rolls Court.

SPECIFIC PERFORMANCE.—PARTIAL EXECUTION OF A CONTRACT FOR SALE OF LANDS.

The Court will compel the cy près execution of an agreement for sale of lands, if it appears that the vendor has an interest which can be conveyed, and the purchaser was not aware at the time of entering into the contract of the vendor's inability to complete it according to its express terms.

By the settlement made on the marriage of the defendant, in December, 1837, certain freehold lands, messuages, &c., were conveyed to trustees upon trust to pay the rents and profits to the defendant for life, with divers limitations over in favour of the children of the marriage, and an ultimate remainder in default of issue of the marriage, for the benefit of the defendant's brother and sister. The settlement also contained a proviso authorising the trustees, with the consent of the defendant, to sell or exchange all or any of the lands, &c. included in the deed, and invest the produce of such as might be sold, or the surplus purchase money, if any, of such as might be exchanged, upon the same trusts as were declared respecting the property to be sold or exchanged. Besides the property included in the settlement the defendant was also absolutely possessed of a leasehold estate, and in April, 1838, he signed an agreement for sale of the whole to the plaintiff, for 5 500*l.*, without taking any notice of the settlement, and, as the plaintiff alleged, representing himself as absolute owner not only of the leaseholds but of the settled estate. Subsequently, however, he refused to complete the contract, principally on the ground that certain cottages which the plaintiff insisted were included in the sale did not form part of the contract, and, as evidence of this, he relied upon their being marked through with a pen in the agreement, which he stated was done previous to that instrument being signed. Under these circumstances the bill was filed for a specific performance of the contract, and the defendant by his answer, besides raising the question with regard to the cottages, suggested that the contract could not be completed, inasmuch as it was not made with

the concurrence of his trustees. The plaintiff examined several witnesses, but no evidence was adduced on the part of the defendant.

Pemberton, G. Turner, and C. Russell, for the plaintiff, contended that the mode in which the pen had been struck through the cottages clearly shewed it to have been done after the agreement was signed, as was also proved by the plaintiff's witnesses. The only question, then, was as to the validity of the agreement, and to affect this the defendant averred by his answer, first, that an undue advantage had been taken of him by the plaintiff in procuring the agreement, and, secondly, that the concurrence of the trustees was necessary. With regard to the first objection, it was sufficient to state that he had not produced any evidence in support of it; and as to the second, it did not appear that he had made any application to the trustees, and it was premature therefore to urge their refusal as a difficulty, when, for aught that was disclosed by the answer, they might think the bargain most advantageous for their *cestui que trusts*, and might be very willing to concur. It was proved by two parties with whom the defendant had been in treaty previous to his agreeing with the plaintiff, that no mention was made by him of any settlement, and it did not appear that the plaintiff had any knowledge of it when his agreement was signed, so that this objection would not be viewed with much favour by the Court: and at all events there must be the usual reference to the Master to ascertain whether a good title could be made to the premises comprised in the agreement, and the defendant would then have an opportunity of suggesting any difficulties he thought proper.

Kindersley and S. Sharpe, for the defendant, referred to the statements in the defendant's answer, as to the contract not being complete, and the small amount of purchase-money compared with the value of the estates, and contended that it was evident from the instrument itself it was a mere preliminary memorandum. It was written upon a piece of waste paper, scribbled over in various parts with figures and writing as to the defendant's wines, and ought not to be considered a final document, and the rather so when the Court took into consideration the disadvantages under which the defendant laboured—the plaintiff being a professional man, who had for many years practised as a solicitor, and the defendant, an inexperienced young man, only twenty-seven years of age. [The *Master of the Rolls* stating there was no evidence of the defendant's age or inexperience, Mr. *Kindersley* admitted that the defendant had not thought it necessary to go into any evidence, and expressed his regret that in some cases the parties could not be produced as exhibits, which his Lordship also stated he thought would in many cases be very useful]. Then, as to the objection with regard to the settlement, no order that the Court could make would be binding on the trustees, for they were not parties to the suit; and the record

was framed with an entirely different *intuitus*, the prayer of the bill being that the defendant might be directed specifically to perform the agreement entered into with the plaintiff, and to execute a conveyance to the plaintiff of the premises comprised therein, or of so much thereof as it should appear a good title could be shewn by the defendant. The case of *Thomas v. Dering*, 1 Keen, 729, was very similar to the present; and there the Court held that an agreement by a tenant for life under a settlement, with a similar power to the trustees to sell with his consent, could not be enforced if the trustees refused to concur.

Turner, in reply, urged that if there had been any foundation for the pretences raised by the defendant's answer, he should have filed a cross bill, and he would then have shewn a disposition to substantiate his statements. Upon the question of value the evidence adduced by the plaintiff was clear and distinct, and completely negatived the defendant's charge of the property being sold at an under-value, and the defendant had examined no witnesses to contradict the plaintiff's witnesses. With regard to the settlement, the plaintiff was not aware of its existence at the time he entered into the contract; but, suppose him to have been cognizant of it, if the trustees had signed the agreement, the Court would have had no difficulty in apportioning the purchase-money between the *cestui que trusts*. It had been stated that there was nothing in the bill by which the trustees could be included, whereas the bill distinctly charged that the settlement contained a power of sale, and that the trustees would concur in completing the agreement with the plaintiff, if applied to for that purpose. Suppose a written consent on the part of the trustees to be produced to the Master, and then the cause to come before the Court on further directions, there would be no difficulty in directing the Master to settle the necessary conveyance.

The *Master of the Rolls*, after stating the facts of the case and the nature of the suit, observed that the real question was whether the agreement was a binding contract and such as could be carried into execution. There was no evidence of fraud, and there was no doubt of the agreement being binding on the party who signed it. The defendant's counsel had suggested the youth and inexperience of the defendant as circumstances to be taken into consideration; but of these no proof had been offered, and the defendant's letters not only shewed that he was quite capable of understanding transactions similar to the present, but displayed considerable acuteness. Whether the trustees would concur in the sale to the plaintiff was not yet ascertained; if they did, then the court would have no difficulty in finding out means for compelling the defendant to complete the contract. But if they refused to concur, and the plaintiff chose to accept less than he has contracted for, it would be for the court to consider whether, having regard to the case of *Thomas v. Dering*, a parol performance should not be ordered. It

was clear the defendant could sell the leaseholds, and it must be referred to the Master to inquire whether the defendant can make or procure to be made a good title to the premises comprised in the agreement, with liberty for the Master to state special circumstances, and his reasons why a good title cannot be made, if he should come to the conclusion that it cannot.

Turner pressed for the plaintiff's costs up to the hearing, and particularly on the ground of the attempt made by the defendant to exclude the cottages; but the *Master of the Rolls* said there was nothing in the defendant's answer to call for particular observation except the allegation that he did not think it a complete agreement. The costs must be reserved.

Graham v. Oliver, July 2d & 3d. 1840. M. R.

Queen's Bench.—Nisi Prius.

[Before Lord Denman.]

LIBEL.

A printer who prints, for the purpose of circulation, slanderous matter against an individual, is responsible for every copy of the printed slander thus circulated, however numerous the persons may be by whom it is circulated.

Libel.—The defendant was a printer, and the alleged libel was contained in a handbill printed by the defendant in the way of his business. He had refused to give up the name of the author. On one occasion a bill-distributor had distributed four hundred of these handbills, which he received from the defendant for that purpose. He was asked by the plaintiff's counsel whether, on another occasion, he had not distributed other copies of the handbill: he answered, that he had done so, having received those other copies from another person. It was objected by Mr. Kelly for the defendant, that this act of a third person was not evidence against the defendant, as it was not proved to be done by his desire, and as the third person, by whose order it was done was liable to an action at the suit of the plaintiff.

Lord Denman, C. J., admitted the evidence, and in charge said: In my opinion the printer who prints, for the purpose of circulation, slanders of this sort, is responsible for every paper circulated, however numerous the other individuals may be who may take advantage of his act, to heap the slander and calumny on the party against whom, by his publication, it is in the first instance directed.

The plaintiff had a verdict, with 80*l.* damages. *Chancellor v. Denne*, Sittings after T. T. 1840. Q. B. N. P.

Queen's Bench Practice Court.

AMENDMENT.—TIME FOR PLEADING.—DEMURRER.—CALCULATION OF TIME.

An order for leave to amend a declaration, and an order for time to plead, were made on the same day: Held that the time for

pleading was to be calculated after the amendment had been made.

In this case the plaintiff had declared on two bills of exchange. A separate count was framed on each bill. To the second count the defendant demurred. The plaintiff took out a summons to amend the second count in the declaration, and an order was accordingly made. The defendant at the same time obtained an order for a month's time to plead. There was no reference from the latter order to the former. The two orders were made on the same day, viz. the 14th March. The plaintiff did not amend his declaration, until the 12th April. He then amended it, and paid the costs of that amendment. On the 14th he signed judgment as for want of a plea.

Bramwell obtained a rule to set aside this judgment as irregular, as it was contended that the defendant was not bound to plead until the plaintiff had amended.

Humfrey shewed cause against the rule, and contended, that whether the judgment was regular or not, must depend on the meaning of the judge's order for time to plead. If the defendant intended to have a month's time to plead from the time of making the amendment by the plaintiff, he should have made that part of the terms of the order, or it should have referred to the plaintiff's order for leave to amend. The plaintiff was not bound to amend sooner than he had amended; and the defendant not having pleaded before the expiration of the month's time given by the order, the plaintiff had a right to sign interlocutory judgment as for want of a plea.

Bramwell, in support of the rule, submitted that the reasonable construction to be put on the two orders, although they did not specifically refer to each other, was, that the defendant's month's time for pleading must be calculated from the time when the amendment was made.

Coleridge, J., thought that the second order for time to plead, must mean a month's time to plead from the time when the plaintiff should make his amendment in his declaration; for the month's time to plead was rendered necessary by the amendment which the plaintiff had obtained leave to make. The defendant's time for pleading not having expired when the judgment was signed for want of a plea, that judgment was irregular.

Rule absolute.—*Davies v. Stanley*, E. T. 1840.—Q. B. P. C.

Exchequer of Pleas.

DISTRINGAS.—LUNATIC.—COMPELLING APPEARANCE.

It is no objection to the issue of a writ of distringas, that the defendant is a lunatic, and confined in an asylum, in which the plaintiff cannot obtain access to him.

The defendant in the present case was out of his mind, and was confined in a lunatic asylum. After the writ of summons had been issued, a person went to the asylum in which the defendant was confined, for the purpose of serving him. On applying to the keeper of the insti-

intion, he objected to his patient being seen. No means therefore existed for obtaining access to him for the purpose of effecting a service.

Fortescue now applied for a writ of *distringas*, in order to enable the plaintiff to enter an appearance for the defendant.

Per Curiam.—We see no objection to your having the writ for which you pray.

Writ granted.—*Rawson v. Moss*, E. T. 1840. Exch.

PLEADING.—NOT GUILTY.—GENERAL ISSUE.—ADMISSION.

In an action against the sheriff for not leaving a year's rent on the premises, when executing a fi. fa., the plea of not guilty, admits the seizure by the sheriff.

In this case *Ludlow*, Serjt., moved to set aside the verdict, and for a new trial. It was an action against the sheriff for improperly removing goods which he had seized by virtue of a writ of *fi. fa.* without paying rent due after notice given. The defendant pleaded not guilty. The cause was tried before Mr. Justice *Patteson*, and it was proved, on behalf of the plaintiff, that an officer of the sheriff went to the house and seized the goods. An objection was taken on the part of the defendant that there was no evidence of a seizure by the sheriff, and that the warrant ought to be produced.

Per Curiam.—Here, the plea of not guilty admits the seizure by the sheriff, as was decided in *Barsham v. Bullock*.^a

Rule refused.—*Reid v. Pointz*, E. T. 1840. Excheq.

WARRANT OF ATTORNEY.—DEFENDANT'S ATTORNEY.—ATTESTATION.

In order to render a warrant of attorney valid pursuant to the provisions of 1 & 2 Vict. c. 110, s. 9, it is necessary that the attorney attesting should act for the defendant only.

Platt shewed cause against a rule obtained by *Thesiger* for setting aside a warrant of attorney, on the ground that the requisites of 1 & 2 Vict. c. 110, s. 9, had not been complied with. The affidavits in support of the rule stated, that Miss *Waters* had been induced by *Westley*, her brother-in-law, to execute a warrant of attorney for a debt owing by the latter to the plaintiff. The plaintiff proposed that Miss *Waters'* family attorney should prepare the warrant of attorney, but to this *Westley* objected, as he said he was aware of her affairs, and would not permit her to execute it. It was then agreed that an attorney of the name of *Goddard*, who had before acted for the plaintiff, should prepare and attest it, which was done at his office, whither the parties went for that purpose. No other attorney was present on behalf of the defendants. *Goddard* made out his bill in the plaintiff's name, and charged the several items to him; but it was delivered to and paid by the defendant *Westley*. It did not clearly appear by whom *Goddard* was first named.

Platt shewed cause, and contended that all the requisites mentioned in the statute as necessary to render this a valid instrument, had been fulfilled. As no proof was given who had originally mentioned the name of *Goddard*, it would be presumed to have been the defendant. If so, the other circumstances mentioned could not interfere with the effect of the warrant of attorney.

Thesiger and *Petersdorff* supported the rule.

Per Curiam.—We think the provisions of the statute have not been complied with. They require that there should be a separate attorney employed by the defendant on his account only.

Rule absolute.—*Sanderson v. Westley and Waters*, E. T. 1840.—Exch.

ATTORNEY AND CLIENT.—TAXATION.—UNDERTAKING.

Where an action is brought for an attorney's bill, containing taxable items, the Court will order it to be taxed without the client giving the usual undertaking to pay what should be found due on taxation.

Cresswell and *Crompton* obtained a rule to shew cause why the defendant in this case should not be allowed to tax the bill of the plaintiff, for the recovery of which the present action was brought. The plaintiff had declared, and by his particulars it appeared, that the action was brought to recover a considerable sum as the amount of a bill of costs, claimed by the plaintiff against the defendant. Several items mentioned in the bill were for business done in Court. Before the defendant pleaded, the present application was made, in order that the bill might be referred to taxation, without the defendant being obliged to give the usual undertaking to pay what should be found due on the enquiry before the Master. The application was founded on the suggestion that where an attorney had brought an action for the recovery of the amount of his bill, and that bill contains taxable items, the Court had power, independent of the 2 G. 2, c. 23, to refer the bill for taxation without requiring the defendant to give the undertaking mentioned in the statute.

Servis and *Welsby* shewed cause against the rule, and contended, that even supposing there were taxable items contained in the attorney's bill, the Court had no power to direct the bill to be taxed, independent of the 2 G. 2, c. 23. This has been decided in the case of *Dagley v. Kentish*.^a The requisites, therefore, of the statute must be complied with, that the defendant should give an undertaking to pay what appeared to be due, when the bill came to be taxed.

Cresswell and *Crompton*, in support of the rule, observed that in *Dagley v. Kentish*, the bill contained no taxable items. The case of *Watson v. Postan*,^b and *Wilson v. Gutteridge*,^c were authorities in support of the application.

Cur. adv. vult.

^a 2 P. & D. 241.

^a 1 D. P. C. 330.

^b 2 C. & J. 370.

^c 3 B. & C. 157.

Alderson, B.—We have conferred with the other Courts upon this case, and on consideration, have come to the conclusion that the rule laid down in *Dagley v. Kentish* should be adhered to in all cases where the bill contains no taxable item; but that where the bill contains taxable items, the Courts have authority, after action brought, to refer it for taxation, without requiring any admission of liability on the bill, or calling upon the defendant to abandon any defence which he may have at *nisi prius*. If the question was *res integra*, we should have been much disposed to decide otherwise, even in the case of *Dagley v. Kentish*; but as it is, we adhere to that decision.

Parke, B., concurred.

Williams v. Griffith, E. T. 1340. Exch.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assent.

3rd July, 1840.

Clergy Maintenance.
Prisons.
Frivolous Suits
Rated Inhabitants.
Vagrants' Removal.

House of Lords.

Copyholds Enfranchisement. *Ld. Brougham.*
[In Select Committee.]
For facilitating the Administration of Justice in Equity. *Lord Chancellor.*
[In Select Committee.]
For the commutation of Manorial Rights.
[For second reading.] *Lord Redesdale.*
Inclosure Acts Amendment.
[For second reading.]
Settled Estates Drainage.
[In Select Committee.]
Law of Principal and Factor Amendment.
[For second reading.]
Masters in Chancery. [For second reading.]

House of Commons.

Small Debt Courts for
Liverpool,
Marylebone,
Wakefield Manor.
Metropolitan Police Courts. [In Committee.]
To extend the Term of Copyright in Designs of Woven Fabrics. *Mr. E. Tennant.*
[In Committee.]
To carry into effect the Recommendation of the Ecclesiastical Commissioners.
[In Committee.] *Lord J. Russell.*
To extend Freeman and Burgesses' Right of Election. *Mr. F. Kelly.*
To amend the County Constabulary Act. *Mr. F. Maule.*
To consolidate and amend the Law of Sewers.
[In Committee.]
Summary Conviction of Juvenile Offenders.
[In Committee.] *Sir E. Wilmut.*
Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage. *Mr. W. Miles.*

To abolish capital punishment in all cases except Murder. [In Committee.] *Mr. Kelly.*
To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[Passed.]

To exempt stock-in-trade and other personal property from being liable to be rated to the relief of the poor. *The Attorney General.*

[In Committee.]

Affirmations. [For second reading.]

Marriages Act Amendment. [In Committee.]

Registration of Voters. [For second reading.]

Right of Voting. [For second reading.]

Insane Prisoners. [For second reading.]

Turnpike Trusts. [For second reading.]

Parochial Assessments. [In Committee.]

Bills postponed.

Law of Copyright.

THE CHANCERY BILL.

THE report of the Select Committee was presented to the House of Lords on Thursday, and the bill, as amended by the Committee, was ordered to be re-printed. In our next Number we shall state the amendments precisely. The Rolls Court and the Judicial Committee are to remain untouched; but there are to be two new Vice Chancellors, and the Equity Exchequer is to be abolished.

THE EDITOR'S LETTER BOX.

We are obliged by the trouble taken by W. M. on the subject mentioned by him, and will endeavour to meet his views in future. In the present Number, he will find we have followed his suggestion. We deem it important not to exclude altogether the correspondence referred to.

The communication of "A Barrister" is under consideration.

The letters of "A Young Practitioner," and "A Country Subscriber," have been received.

A Correspondent, referring to the many allusions which have lately been made to a relaxation of the hours of attendance of clerks in solicitors' offices, during the *present* vacation, asks whether it is generally understood in the profession that the vacation *practically* commences after the assizes and the chancery sittings are over. He considers it as commencing at the close of the Accountant General's Office, and terminating with the opening of the Common Law Offices, on the 20th of October.

We have received a letter, complaining of the system of *cramming* candidates for the examination; and one of the circulars has been sent to us, similar (it is supposed) to that sent to all those whose names are in the masters' list.

The Legal Observer.

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SATURDAY, JULY 18, 1840.
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———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE BILL FOR CHANCERY REFORM.

WE most sincerely hope that the gloomy anticipations to which we gave expression in our last number will turn out, so far at least as one important measure is concerned, to be unfounded. We have now every reason to expect that the Lord Chancellor's Bill for Improving the Administration of Justice in Equity will pass into law, and that thus one much-desired end of Chancery Reform will be effected. On Thursday the 9th, as we shortly mentioned in our last number, the Lord Chancellor presented the Bill to the House of Lords as amended by the Select Committee; and Lord Lyndhurst informed the House, at the same time, that the Committee was unanimous as to the alterations proposed by the bill as it now stands. Let us, therefore, see the alterations which have been made in it since it was first introduced. *The Bill, as we there stated, referred to four different matters:—I. The Judicial Committee of the Privy Council. II. The Court of Exchequer. III. The Judges of the Courts of Equity. And IV. The Officers of the Courts of Equity.

The clauses relating to the Judicial Committee of the Privy Council are now entirely struck out; and as they related certainly to the most questionable part of the measure, we see reason rather to rejoice at this, than to regret it. That the Judicial Committee of the Privy Council needs alteration and improvement is unquestionably true; but the mode in which this may be effected

will more properly come under consideration when the appellate jurisdiction of the House of Lords is remodelled, as remodelled it shortly must be.^b Besides, the leaving the Master of the Rolls where he is, for the present, and allowing him to apply his whole time in his own Court, will give the new Equity project an additional chance of success. This alteration is, therefore, an improvement to the Bill.

These clauses being struck out, the remaining part of the Bill in all its material clauses remains the same. The Equity jurisdiction of the Exchequer is to be abolished. The Exchequer offices are either to be transferred to the Court of Chancery, or to be abolished, and two additional Vice Chancellors are to be appointed; but there is this difference between the Bill as originally introduced, and the Bill as it now stands:—By the former, the two new Vice Chancellors were to be permanently appointed; but, by the latter, the Vice Chancellor secondly appointed is only to be appointed for life, and it will be necessary to come again to Parliament to renew the appointment. We consider that this is also an improvement, and that it will facilitate the passing of the Bill in the House of Commons. We believe that a case has been made out for the appointment of two additional Judges, and that both will be found absolutely necessary for the future; but still, as it is said by some that the present arrear is only temporary, it may be well to have the power of withholding the appointment of an additional Judge, if he should not be found necessary. If the Bill passes, which we believe and trust it will, the per-

* See the Bill as originally brought in, 19 L. O. 286—290.

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^b See, as evidence of this, the resolutions of Sir Edward Sugden, 19 L. O. 424.

manent judicial staff of the Court of Chancery will be—

The Lord Chancellor;
The Master of the Rolls;
The first Vice Chancellor;
The second Vice Chancellor; and
The third Vice Chancellor.

But the third Vice Chancellor will only be appointed in the first instance for life. The present Vice Chancellor, of course, keeps his present rank; but the new and all future Vice Chancellors will take precedence after the Lord Chief Baron of the Exchequer. There will also be one additional Master in ordinary of the Court of Chancery, he being in the first instance Mr. Richards, the present Accountant General of the Court of Exchequer.

The mode of regulating the business of the old and new Courts, is provided for by ss. 22 and 23. By s. 22, the Lord Chancellor, with the concurrence of the Master of the Rolls and the Vice Chancellors, or any two of them, is empowered "to do all such acts, and to make and issue all such rules and orders, as by any act or acts of parliament now in force, the Lord Chancellor, with the advice or concurrence of the Master of the Rolls and the Vice Chancellor is empowered to do." This refers to ss. 22 & 23 of the Chancery Regulation Act, 3 & 4 W. 4, c. 94, by which the Lord Chancellor, with the advice of the Master of the Rolls and Vice Chancellor, is empowered to make rules for simplifying and settling the practice of the Court. The clauses point, we have no doubt, to considerable intended alterations in the practice, which indeed the alterations in the Court will render absolutely necessary. By s. 23 of the new bill the Lord Chancellor and Master of the Rolls are empowered to direct that any causes or matters which shall be depending for hearing or determination before the Master of the Rolls shall be heard by the Lord Chancellor, or by one of the Vice Chancellors, and to direct that any causes or matters which shall be at any time depending for hearing before the Lord Chancellor shall be heard by the Master of the Rolls; but all decrees of the Master of the Rolls, or of any Vice Chancellor, may be reversed by the Lord Chancellor. By a former section, (s. 16) each or either of the Vice Chancellors shall sit for the Lord Chancellor whenever he shall require him to do so, and shall also, as the Lord Chancellor shall direct, sit in a separate Court.

These clauses will enable the Judges of the Court not only to dispose of the exist-

ing arrear, but prevent any future arrear in any of the new Courts, and will also give a wholesome controul over the whole business of the Court.

The powers of the Vice Chancellors are defined by s. 15. They are to hear and determine all causes and matters depending in the Court of Chancery, either as a Court of Law or Equity, or which has been or shall be submitted to the jurisdiction of the Court, or of the Lord Chancellor, by the special authority of any act of parliament, as the Lord Chancellor shall from time to time direct; and all such decrees and orders so made may be reversed by the Lord Chancellor, and no Vice Chancellor shall have power to discharge, reverse, or alter any decree or order made by any other Vice Chancellor, not being a predecessor in office, or any decree or order made by any Lord Chancellor, (*unless authorized by the Lord Chancellor so to do*) nor any decree of the Master of the Rolls or the present Vice Chancellor.

This is the substance of the measure which, as we trust, is about to become law, and which will come into operation in next Michaelmas Term. There will be three Judgeships to be filled up; two in the Courts of Equity, and one in the Pleas Court of the Exchequer. We abstain from mentioning the names of the learned persons who, it is said, will be appointed, until the Bill obtains greater maturity.

We do not anticipate any serious opposition in the Lower House. It is to be remembered, however, that Sir Edward Sugden has repeatedly given notice that on any such bill coming down, he will move the resolution to which we have already referred, being of opinion that there should be no partial settlement of the question. We cannot believe, however, that he will persist in this course, or that if he does, any number of members will support him.

So far the Bill as amended by the Select Committee—but two clauses have been added on the Report, which well deserve to be noticed. The first of these, (being s. 30 of the last part of the Bill) authorizes the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor, to reverse the orders of the Court of Exchequer in suits and matters transferred to the Court of Chancery, but any such decree of the Master of the Rolls or Vice Chancellor, may be reversed by the Lord Chancellor. This clause will have the effect of giving an appeal to the Court of Chancery in all existing suits in the Exchequer.

But the other clause is of still greater importance, and points to changes even still more extensive than any to be effected by this Bill. It is as follows:—

The Lord Chancellor, with the advice and consent of the Master of the Rolls, and one or other of the Vice Chancellors, or with the advice and consent of two of the Vice Chancellors, may and they are hereby required, by any rules and orders to be from time to time by them made at any time within five years from the passing of this act, to make such alterations as to them may seem expedient in the form of writs and commissions, and the mode of sealing, issuing, executing, and returning the same, and also in the form and mode of filing bills, answers, depositions, affidavits, and other proceedings, and in the form and mode of obtaining discovery by answer in writing or otherwise, and generally in the form and mode of pleading, and in the form and mode of taking or obtaining evidence, and in the form and mode of proceeding before the Masters, and in the form and mode of entering and enrolling decrees, and of making and delivering copies of pleadings and other proceedings, and to make such regulations as to the payment of costs, and otherwise for carrying into effect the said alterations, as to them may seem proper; and all such rules, orders, and regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making and issuing of the same, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament, Parliament having been sitting during the whole of such six weeks; and every rule, order, or regulation so made shall from and after the time aforesaid be binding and obligatory on the said Court, and on any Courts in which the decrees or orders of the said Court shall be reviewed by way of appeal, and be of like force and effect, as if the provisions contained therein had been expressly enacted by Parliament.

We call particular attention to the part of the clause which we have printed in italics, as, if acted on, it will sanction extensive alterations in the Master's office, in the taxation of costs, in the forms of pleadings, and taking copies of all proceedings in the Court. Indeed, we are in hopes that a great deal, if not all, may be done under it with respect to that reform of the offices connected with the Court of Chancery, for which we have been so long contending.

The advantage of the present practice in the Exchequer, of attaching stock by a *distingas*, without motion or petition, should be preserved. We know instances in which the delay of a formal application to the Court would have defeated the object in view.

THE PROPERTY LAWYER.

REVOCATION OF LICENSE.

It now seems clearly settled that where a power of attorney forms part of a security for money, or where it is given for a valuable consideration, or is coupled with an interest, it is irrevocable. *Gaussen v. Morton*, 10 B. & C. 731; *Walsh v. Whitcomb*, 2 Esp. N. P. C. 565; Sug. V. & P. vol. 2, p. 438, ed. 10th. So, when a license is given for a valuable consideration, it cannot be revoked. Thus, in *Taylor v. Waters*, 7 Taunt. 874, the plaintiff had paid a valuable consideration for the license of frequenting the Opera House, and it was held that the license could not be countermanded. And in a very recent case, where the plaintiff, on the 28th of Oct., sold a rick of hay on his land, with the condition that it might remain there and be carried away from time to time by the purchaser up to Lady-day, it was held that this license could not be revoked. Lord Denman, C. J., said, "the argument goes this length, that if I sell goods to A., who pays for them, I am at liberty to turn him off my premises before he obtains possession of what he has bought. The law does not recognize anything so absurd." *Patteson, J.*—The whole question here is whether the license granted by the plaintiff was revocable or not. If any authority be wanted to shew that it was not, *Taylor v. Waters*, 7 Taunt. 374, is sufficient; there the plaintiff had paid valuable consideration for the license of frequenting the Opera House, which, of course, could only be exercised on the spot, and it was held to be a license that could not be countermanded. So, in this case, the inducement held out to the defendant to buy at the auction, was, that the hay should remain on the premises, and that he should be at liberty to fetch it as he wanted it. He buys on those terms; and I think, therefore, the license was executed just as much as in *Taylor v. Waters*. The other cases upon the subject (see *Webb v. Paternoster*, Palm. 71; *Crosby v. Wandsworth*, 6 East, 602; and *Hewlins v. Shippam*, 7 D. & R. 783; S. C. 5 B. & C. 221), certainly differ, and I do not go the length of saying that because a party has bought goods on the land of A., he has the right to force an entry and take them away. *Coleridge, J.*—The question on the second issue is, whether the defendant had the plaintiff's leave and license at the moment the act was done. It was put very strongly that he could not have had such license because the plaintiff did

all in his power to prevent his entry. But, if the license is irrevocable, it did exist in point of fact at that very moment. And I think it was irrevocable, on the principle that where in consequence of the permission given by a party, anything is done upon the reliance of its continuance, the license becomes binding on the party granting it. *Wood v. Manley*, 3 Per. & Dav. 5.

NOTICES OF NEW BOOKS.

An Examination of the Rules of Law, respecting the Admission of Extrinsic Evidence in aid of the Interpretation of Wills. By James Wigram, Esq., one of her Majesty's Counsel. Third edition. London: Maxwell. 1840.

THIS work relates to one of the most important and abstruse parts of the law of wills. Our readers are aware, that by the 5th section of the Statute of Frauds (29 Car. 2, c. 3,) all devises of lands or tenements shall be in writing, and signed by the party devising, or by some person in his presence and by his directions. The object of the present work is, to consider under what restrictions, consistently with this statute, extrinsic evidence is admissible in aid of the exposition of a will. According to the rules of the common law, no parol evidence was admissible to contradict, or vary, or add to, a written instrument. But where the description in the instrument is insufficient to determine the *person* or *thing* intended, parol evidence is admissible, as in a devise to two persons of the same name.^a Notwithstanding the statute, courts of law, though precluded from ascribing to a testator any intention not *expressed* in his will, will give effect to the intention which the will, *properly expounded*, contains. Evidence, therefore, will be received, which simply explains what the testator has actually written, but not what he intended to write. The question to be decided is, "what is the meaning of the testator's words;" not what he *meant* to express, but what he *has* expressed.

Mr. Wigram, with great care and precision, has stated the several propositions which he contends may be deduced from the several cases which have been decided on the various parts of the subject, and by his classification of the cases, or such parts of them as bear on the points in question, he has rendered the nice distinctions which

have been drawn more intelligible than they have hitherto appeared, though some of them are still very difficult to reconcile with any sound principle of law.

His propositions are:—

"1. That a testator is always presumed to use the words in which he expresses himself, according to their strict and primary acceptance, unless, from the context of the will, it appears that he has used them in a different sense, in which case the sense in which he thus appears to have used them will be the sense in which they are to be construed.

"2. That where there is nothing in the context of a will from which it is apparent that a testator has used the words in which he has expressed himself in any other than their strict and primary sense, and where his words so interpreted are *sensible with reference to extrinsic circumstances*, it is an inflexible rule of construction, that the words of the will shall be interpreted in their strict and primary sense, and in no other, although they may be capable of some popular or secondary interpretation, and although the most conclusive evidence of intention to use them in such popular or secondary sense be tendered.

"3. That where there is nothing in the context of a will from which it is apparent that a testator has used the words in which he has expressed himself in any other than their strict and primary sense, but his words, so interpreted, are *insensible with reference to extrinsic circumstances*, a Court of law may look into the extrinsic circumstances of the case, to see whether the meaning of the words be sensible in any popular or secondary sense, of which, *with reference to these circumstances* they are capable.

"4. That where the characters in which a will is written, are difficult to be decyphered, or the language of the will is not understood by the Court, the evidence of persons skilled in decyphering writing, or who understand the language in which the will is written, is admissible to *declare* what the characters are, or to inform the Court of the proper meaning of the words.

"5. That for the purpose of determining the object of a testator's bounty, or the subject of disposition, or the quantity of interest intended to be given by his will, a court may inquire into every *material* fact relating to the person who claims to be interested under the will, and to the property which is claimed as the subject of disposition, and to the circumstances of the testator and of his family and affairs, for the purpose of enabling the court to identify the person or thing intended by the testator, or to determine the quantity of interest he has given by his will.

"The same (it is conceived) is true of every other disputed point, respecting which it can be shewn that a knowledge of extrinsic facts can, in any way, be made ancillary to the right interpretation of a testator's words.

"6. That where the words of a will, aided by evidence of the material facts of the case,

^a *Cherney's case*, 5 Rep. 68.

are insufficient to determine the testator's meaning, no evidence will be admissible to prove what the testator intended, and the will, (except in certain special cases, see proposition 7.) will be void for uncertainty.

"7. That notwithstanding the rule of law, which makes a will void for uncertainty, where the words, aided by evidence of the material facts of the case, are insufficient to determine the testator's meaning—Courts of Law, in certain special cases, admit extrinsic evidence of intention to make certain the person or thing intended, where the description in the will is insufficient for the purpose.

"These cases may be thus defined :—Where the object of a testator's bounty, or the subject of a disposition, (that is, the person or thing intended,) is described in terms which are applicable indifferently to more than one person or thing, evidence is admissible to prove which of the persons or things so described was intended by the testator.

Our readers will perceive, on attentively considering these propositions of the learned author, that they comprise a wide range of legal disquisition. The terms in which they are stated shew great thought and reflection on the cases from which they are deduced. Every word has evidently been well considered by a mind accustomed to the most subtle distinctions.

The first proposition is illustrated by the case of *Dent v. Pepys*, 6 Madd. 350, in which the Vice Chancellor substituted the name of one set of devisees for another, upon the ground that the context of the will required him to do so.

The second proposition is illustrated by a long string of cases, and amongst others by the *Attorney General v. Grote* (stated by Mr. Wigram in his appendix from a MS. note) in which Sir William Grant said, "to authorise a departure from the words of a will, it is not enough to doubt whether they were used in the sense which they properly bear. The Court ought to be quite satisfied that they were used in a different sense, and ought to be able distinctly to say what the sense is in which they were meant to be used."

The case of *Gill v. Shelly*, at the Rolls, 28th January, 1831 (stated by Mr. Wigram from his own notes), is adduced in reference to the third proposition. In that case it was held that "children of the late M. G." who had one illegitimate and one legitimate child, included both children.

The fourth proposition is supported, amongst other cases, by that of *Goblet v. Beechey*, stated in Mr. Wigram's book, and also in 3 Sim. 24, where in the will of Mr. Nollekin's, "mod" was explained by the witnesses to mean "models." Under this

head evidence is admissible to determine the abstract meaning of words.

The fifth proposition relates to evidence applicable to the meaning of words in the will, which, though inaccurate, may be sufficient; but where extrinsic evidence is necessary to determine the question of their meaning, evidence may be given to shew the general circumstances relating to a testator and his family.

Under the sixth point Mr. Wigram considers, whether, assuming the intention to be uncertain, notwithstanding the admission of evidence, the will shall be deemed void for uncertainty, or evidence be admitted to prove intention? He cites the opinions of various Judges, and quotes several cases, but leaves the conclusion in doubt. Lord Alvanley, in deciding on a will of doubtful construction, said, "as to irresistible inference, I do not know what is meant by that; I admit it must be such an inference as leaves no doubt upon the mind of the person who is to decide upon it. It must be irresistible to my mind." Lord Eldon, in *Attorney General v. Grote*,^b said, "individual belief ought not to govern the case—it must be judicial persuasion." In the case of *Goblet v. Beechey*, 3 Sim. 24, the inference that Nollekens meant models by the word "mod," was irresistible to the mind of the Vice Chancellor (*Shadwell*). His mind was judicially persuaded that such was the sense in which the testator used the word. The mind of the Lord Chancellor (*Brougham*) was proof against the same impression.

In illustration of the seventh point various cases are adduced in which evidence has been received to prove the intention of the testator, but in which the proof of intention as a fact was not fully recognized. Cases are then referred to in which intention, independent of the words of the will, has been proved as a fact. Mr. Wigram questions the soundness of these decisions, and says, the principle, if any, on which the excepted cases, taking them collectively, are founded, is by no means obvious. He adds, that evidence may be admitted to prove intention where the description is applicable to and describes several subjects, but not where the description in the will does not describe or ascertain any subject with legal certainty. And he maintains, that the admission of evidence of intention to fill up a blank is not a greater violation of principle than the admission of similar evidence to make perfect an insufficient description.

^b Cited by Mr. Wigram from a MS. note.

The conclusion to which Mr. Wigram comes is, that the only cases in which evidence to prove intention is now admissible are those in which the description of the *person* or *thing* in the will applies indifferently to and sufficiently describes each of several subjects; and that every claimant under a will has a right to require a court of construction in the execution of its office to place itself by means of extrinsic evidence in the situation of the testator, the meaning of whose language it is called upon to decide.

We need scarcely add, that we strongly recommend this work to the perusal of practitioners in general.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. IV.

3 & 4 Vict. c. 26.

EVIDENCE OF RATED INHABITANTS.

An act to remove doubts as to the competency of persons, being rated inhabitants of any parish, to give evidence in certain cases.

[3d July, 1840.]

Persons not disqualified from giving evidence on account of being assessed to parochial rates.—Whereas it is expedient to remove all doubt whether persons are by law competent to give evidence in cases where they have been formerly held to be disqualified by the liability to pay parochial rates: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act no person called as a witness on any trial in any Court whatever may and shall be disabled or prevented from giving evidence by reason only of such person being, as the inhabitant of any parish or township, rated or assessed, or liable to be rated or assessed, to the relief of the poor, or for and towards the maintenance of church, chapel, or highways, or for any other purpose whatever.

2. *Nominal parties on any trial not disabled from giving evidence.*—And be it enacted, that no churchwarden, overseer, or other officer in and for any parish, township, or union, or any person rated or assessed or liable to be rated or assessed as aforesaid, shall be disabled or prevented from giving evidence on any trial, appeal, or other proceeding by reason only of his being a party to such trial, appeal, or other proceeding, or of his being liable to costs in respect thereof, when he shall be only a nominal party to such trial, appeal, or other proceeding, and shall be only liable to contribute to such costs in common with other the rate-payers of such parish, township, or union.

NOTES ON THE LEGAL EXAMINATION.

BY A BYSTANDER.

[Continued from p. 200.]

ON the morning of the examination we rejoined the bevy of embryo lawyers. It was soon evident that the gaiety of the preceding evening had departed; as if by mutual agreement all had not slept. Neverton declared he could not fancy eggs in London. Neverfear was determined to eat, but half a roll was too much for him; Ready tried, but failed; and all were a little feverish, though neither would assign the cause. Newton was differently affected: while poring over his book he had commenced his third roll, without being aware that he had been eating; and Singleton was rather unwell; consequently the meal passed off with the silent solemnity of a Quaker's meeting, and, when over, they all repaired to the Law Institution, whither we immediately followed them.

The entrance hall was crammed, and our first reflection was upon the happiness of a country having the prospect of such an increase of talented defenders of its constitutional rights and liberties. But we were interrupted by an exclamation of Grabel Newton, who had placed himself against one of the pillars, as if for support; "I do not care for myself," said he. "Nor I;" replied another, who we afterwards discovered came from the Principality, and had just received a letter from his wife;—"Never mind," said she, "if you do fail, you will not be the first, nor will you be the last; the race is not always won by the swift, nor the battle by the strong."

The door soon opened, and we perceived that three gentlemen only were admitted at a time, who, on receiving their numbers, took their seats opposite to those corresponding on the long green tables in the middle and on the sides of the hall. This being done, others were admitted, who did likewise, until the whole were seated.

The few minutes that elapsed before the Examiners appeared were apparently most anxious ones; the perspiration was visible on the pale faces of some who were endeavouring to hide it by a vigorous application of silk handkerchiefs; others were busily employed in mending pens which they had not previously tried; and all were waiting with breathless expectation the delivery of the questions.

At length they came; and though some have prided themselves upon not reading them till they came in turn to be answered, we fancy they were eagerly read by most;—of this we are certain, that all were very soon employed in answering them.

It is apparently an objection to this mode of examination, that considerable anxiety is occasioned immediately previous to the hour of trial, which not only operates distrustfully upon the mind, but, by an unusual agitation, renders it unable to exercise its powers. The

consequences of failure, too, press heavily upon some who may really have been industrious; and we have been assured by Mr. Ready and Mr. Neverfear, that they never performed an exercise with so little satisfaction as this, their examination. But we will not anticipate. If, however, our theory be correct, the plan so thoughtlessly struck out by Mr. Singleton appears deserving of consideration, and we may probably take an opportunity of respectfully commending it to the consideration of the proper authorities, with such suggestions of our own as upon further investigation may appear desirable; for, without more particularly adverting to the happy change which the accidental circumstance of a legal examination is likely to make in our own condition, we owe nothing to the Profession but good will, and have a special sympathy for those future candidates for its honours and emoluments, who, from constitutional and accidental causes, may shrink from the present ordeal, without being deficient in the legal knowledge necessary to pass safely through it.

But we are digressing. Permission to enter was of course denied to us, but we patiently lingered at the door with a few friends of the candidates within, from which we saw that all was excitement there. At length, a little before twelve o'clock, we perceived one of them move towards the Examiners, and afterwards towards the door; he was the first that came out, and we were assured by some of the bystanders that he was "a very clever fellow," although no one appeared ever to have seen or heard of him before. We thought of the bubble, reputation—and would have spread his fame abroad if happily we could have discovered him; but we could not.

Few left before one; but between that and two they became more numerous, and we were rejoiced to find our friend Singleton making his way out with all the eagerness of one who felt that he was escaping from an oppressive atmosphere. Soon afterwards Neverton passed us, biting his lips; and before three he was followed by Newton, who was evidently relieved from his morning's anxiety, and descended the steps with the ease of one satisfied with himself. We were delighted, but were unable to congratulate him on his altered appearance, being recognised by the son of our old friend Zachary Ironside, who came out with him, and notwithstanding the disparity of our years, eagerly caught hold of our arm, and, pulling us along, invited us to accompany him. We saw he was delighted, and feeling ourselves for the day quite upon town, we accordingly did so.

Mr. Ironside hailed the first vehicle he saw, and ordered the man to drive with all speed to the — hotel, in — street; where, we learnt on the way that he and Mrs. Ironside were staying. Arrived there, he assured her that it was all over; that he had answered fifty-six out of the seventy-five questions, and was sure to pass; after which he introduced us to Mrs. Ironside, a pretty woman of twenty-three, to whom we learnt that he had been

three months married, but fearing his excitement relative to the examination, she had come up to town with him, accompanied by a neighbouring gentleman and his wife, who had determined upon becoming Mr. Ironside's first client, by employing him before he left the Court in which he was admitted, and who evidently entertained towards him all the cordiality and the kind consideration of the friendships of the olden time.

We must not state what passed on this interesting occasion; suffice it to say that it confirmed our resolve, in reference to an error of twenty years' standing, and induced us to think a change in our domestic policy was desirable. Taking a reluctant leave of our friends, we returned home, expecting to find the friends with whom we had breakfasted.

And we were right: mutual curiosity had brought them together for the purpose of discussing what Singleton called the "Probabilities;" but we found them so uproarious, and ourselves so much fatigued, that we cannot do more than undertake to detail what passed on the first opportunity.

THE LAW OF MUTUAL CREDIT.

REFERRING to a recent article on this subject, (p. 150, *ante*), it may be useful to notice some points and decisions which were not then adverted to. The case of *Buchanan v. Findlay*, 9 B. & C. 738, is an example of a class of cases where the law of mutual credit does not apply. The facts were as follow: *A. & Co.*, merchants at Liverpool, remitted a bill to *B. & Co.*, in London, with directions to get it discounted, and apply the proceeds in a particular way. *B. & Co.* did not get the bill discounted, but received the money when it became due. Before that time *A. & Co.* had stopped payment, and desired to have the bill returned to them. A commission of bankrupt having been issued against them before the money was received on the bill by *B. & Co.*, it was held that the latter were liable to be sued for the amount by the assignees of *A. & Co.*, as money received to their use, and that *B. & Co.* could not set-off a debt due to them from *A. & Co.*

Lord Tenterden thus states the principle on which these cases depend: "In the present case the bills were sent to the defendants for a specific purpose, and, as soon as the defendants declined to perform that purpose, the right to retain the bills ceased, and the parties were legally bound to restore them on demand."

"If goods or bills are deposited for a specific object, and the bailee will not perform that object, he must return them. The property of the bailor is not divested or transferred until the object is performed."

In the case of *Thorpe v. Thorpe*, 3 B. & Ad., 580, Parke, J., alluding to *Buchanan v. Findlay*, says: "It was not a case of mutual credit, because the transaction on the part of the assignees was against good faith." This case of

Thorpe v. Thorpe appears *prima facie* to be at variance with the decision in *Buchanan v. Findlay*. The circumstances were these: *A.* remitted a bill of exchange to *B.*, to be paid to a third person on *A.*'s account. *B.* discounted the bill, but did not pay over the proceeds, upon which *A.* sued him in assumpsit for money had and received; and it was held that in this action a set-off was admissible.

In pronouncing judgment, *Parke, J.*, said: If the plaintiff had chosen, instead of assumpsit for money had and received to bring a special action for the breach of duty, there could have been no set-off, because it would have been an action for unliquidated damages. The expressions of the Court in *Buchanan v. Findlay* must be taken with reference to the subject-matter. In that case the bills remained in the hands of the defendants, unapplied to the purposes for which they had been sent, when the parties who had sent them countermanded the order for their being discounted, and desired to have them returned, which was not done." The distinction between the two cases is, that in one the bill had been converted into money, whereas in the other it had not; and it must be concluded from *Thorpe v. Thorpe*, that if in *Buchanan v. Findlay* the bills had been discounted before the bankruptcy, the mutual credit would have been let in.

There is another class of cases to which sec. 50 of the Bankrupt Act, 6 Geo. 4, c. 16, does not apply on the ground of fraud or unfair dealing; the two principal cases are *Fair v. McIver*, 16 East, 130, and *Lackington v. Combes*, 6 Bing. N. C. 71. In *Fair v. McIver*, third persons, holding the acceptance of a trader who was known to be in bad circumstances, agreed with the defendants, as a mode of covering the bill, that it should be indorsed to them, and that they should purchase goods of the trader, which were to be paid for by a bill at three months' date, or made equal to cash in three months (before which time the trader's acceptance would be due) but without communicating to the trader that they were the holders of his acceptance. It was held that the trader having become bankrupt, and his assignees having brought assumpsit to recover the value of the goods sold and delivered to the defendants, the latter could not set-off the plaintiff's acceptance which they did not hold in their own right, but in effect for such other persons. Lord Ellenborough says: "It is argued that in bringing an action on the contract of sale the assignees have affirmed that the transaction was fair throughout; but that is stated with too much latitude. The plaintiffs, by suing on the contract of sale, only affirm that nothing on the part of the bankrupt was fraudulent; but they do not thereby admit that there was no fraud in the parties against whom they are endeavouring to enforce it." And subsequently his Lordship said: "Wilson (the bankrupt) was not truly and justly indebted to the defendants at the time of the sale; and though they might have brought an action against him on the bill, yet, upon the statute, by way of claim under the commission, they

must have sworn that he was then truly and justly indebted to them upon the bill—which they could not have done for that purpose, as they held it merely as trustees.

In *Lackington v. Combes*, 6 Bing. N. C. 71, the facts were very similar.

To an action by the assignees of a bankrupt for the price of a phaeton, for which the defendant had agreed to pay ready money, the defendant pleaded a set-off, in respect of a bill of exchange drawn by *A.*, and accepted by the bankrupt, and indorsed by *A.* to the defendant. The plaintiffs replied, that after the bill was dishonoured, *A.* indorsed it to the defendant, without consideration, in trust that the defendant should purchase the phaeton of the bankrupt, and hand it over to *A.* and fraudulently attempt to set-off the bill against the price of the phaeton: this was held a sufficient answer to the claim of set-off.

Tindal, C. J.—"The question in this case turns upon the clause in the bankrupt act, which gives the right of set-off, and we think, under the facts stated in the replication, there was no debt whatever between the bankrupt and the defendant, arising out of the acceptance, within the meaning of that clause. We think there was no real *bond fide* debt due to the defendant, capable of being set-off under the statute."

It appears from this decision that in a set-off under the bankrupt laws, the Court may inquire into all the circumstances which give rise to the claim, and exercise a kind of equitable jurisdiction for the protection of the creditors.

These three classes of cases, the principle of each of which, appears from the cases of *Clarke v. Fell*; *Buchanan v. Findlay*; and *Fair v. McIver*, respectively do not come within the law of mutual credit.—With these exceptions it may be taken as a rule, that every debt, or transaction which must end in a debt, is included in the operation of s. 50, of the bankrupt act, and that a plaintiff cannot by any special form of pleading deprive the defendant of the advantage of a set off. *Groom v. West*, 8 Ad. & El. 75.

Formerly contingent debts, not due at the time of the bankruptcy, could not be set-off; but now as contingent debts are proveable under the 6 G. 4, c. 16, s. 56, they may be set-off.

Debts due in different rights cannot be set-off. Thus, a debt due from a bankrupt to a married woman *dum sola*, cannot be set-off against a debt due from her husband to the bankrupt. *Ex parte Blagden*, 19 Ves. 465. So a debt due from an executor on his own account, cannot be set-off against a debt due to the testator, *Bishop v. Church*, 3 Atk 691. But a debt due to a person as surviving partner may be set off against a debt due from him in his own right, and *e converso*. *French v. Andrade*, 6 T. R. 582; *Slipper v. Slidstone*, 5 T. R. 493.

SELECTIONS FROM CORRESPONDENCE.

ADMISSION OF ATTORNEYS IN VACATION.

Is it not an anomaly, that while under the regulation for the admission of Attorneys one clerk may be admitted in Trinity Term, after giving something short of two months' notice, another clerk, whose articles expire on the 18th of June (the day after Trinity Term), cannot be admitted until Michaelmas Term, in November, having to give about six months' notice. Without regard, then, to the law terms, is it not practicable to lay down some rule to make the times of admission more frequent and uniform, and the notices shorter, and also to answer every other necessary purpose? Say, for instance, that the examinations and admissions shall take place once every six weeks, or, at the utmost, two months; and that the notice should be twenty-one days or a month. In this proposition I cannot perceive anything at all unreasonable, and I shall therefore be glad if it should attract that attention which it seems to me to deserve. L. W.

[The Act of Parliament requires that the Attorney shall be sworn in open Court. The Act must be altered before this suggestion can be adopted. Ed.]

SERVICE OF CLERKSHIP.

Is service to a *country* attorney, having chambers and doing business in town, but *not* having a *town* certificate, good service of the clerkship, the clerk being employed in the attorney's chambers in town?

Is a *certificated conveyancer* in the country included in the 1st and 2d G. 4, c. 48, to whom the clerk might go as a pupil for one year during the clerkship, the certificate being taken out under the 55 G. 3, c. 184.

ADOLESCENS.

[As to the 1st question, if the attorney frequently comes to town, the service perhaps would be sufficient, but it is doubtful. We suppose there is no partner residing generally in town.

As to the 2d point, it is clear no such service would be good. Ed.]

TAXATION OF COSTS.—WITNESSES.

A short time ago, I had to attend the taxation of a bill in which were a number of witnesses, the payment to, and expenses of whom were placed in the *body* of the bill. On coming to them, the Master said he would then strike them all out, and tax them *at the end* of the bill. This was done, the Master having the names, and placing the allowances on a separate piece of paper of his own, and then giving the gross amount he had allowed for them. Of course, I could not check my

bill as he mentioned *seriatim* the allowances he had made, because they had all been struck out. On applying for a copy of the allowances as on the Master's paper, it appears to be the custom not to give it, so that I am not, and, according to this method, cannot, be aware of what certain witnesses have been allowed, which, as it happens in this instance, it is material for me to know. Now, the case resolves itself into this: parties are either not to know anything of the witnesses' allowance beyond the gross sum,—which is palpably unjust,—or, if they fail to keep a check by their own bill as the Master mentions the allowances he makes, they are not afterwards to have a copy, which is a ridiculous distinction.

LATITAT.

ENTRANCE TO THE JUDGES' CHAMBERS.

During the sitting of the Rolls Court in Rolls Yard, a door is thrown open, affording a passage from Rolls Garden to Rolls Yard, and thus allowing a convenient way from the judges' chambers to Chancery Lane. This gate we are informed by a board, is only opened for the accommodation of the bar; but however exclusive may be the ideas of the powers, who caused the gate to be opened they do not have the effect of restricting the accommodation to the chosen few, and accordingly it is most frequently made use of by attorneys and their clerks; indeed, so convenient is it to them, that I believe, a great desire exists that the gate should be always kept open, and if there exists no solid objection to this course, it surely ought to be adopted, for all persons acquainted with the spot, must be aware how very inconvenient is the locality chosen for the judges' chambers, and therefore, every means should be used of facilitating ingress to, and egress from them. LEGALIS.

DATE OF JUDGMENT PAPER.

There is much uncertainty and difference of opinion, as to whether a judgment paper should be entitled of the date of the declaration, or of that of signing judgment. The latter seems to me the proper mode, but it is desirable that it should be known which of the two is really correct. LEGALIS.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—PETITION OF RIGHT.

The Lord Chancellor has no jurisdiction to give any decision in a petition of right referred to him, with the general indorsement of the Crown, "Let right be done to the party." All he has to do is to issue a commission, and upon return of the Commissioners' inquisition to issue a writ for the petitioner, to which the officer of the Crown may demur or plead, and thereby a record is constituted for a Court of Law

to hear and decide the question raised by the pleadings, on the merits.

The Baron de Bode presented a petition of right to the Queen, stating amongst other things, to the effect that he is a British born subject; that by decrees of confiscation and sequestration passed by the French revolutionary government against the property of British subjects in France, in the year 1793, an estate devised to the petitioner by his father, a German baron, and situate at Soultz in lower Alsace, within the territory of France, was confiscated; that by treaties and conventions entered into by and between the French and English governments in the years 1815 and 1818, a fund was provided by France, and transferred to the British government, for the purpose of compensating British subjects for their property confiscated in pursuance of said decrees; that the British government appointed commissioners of liquidation and adjudication, before whom the petitioner preferred a claim for compensation, amounting to upwards of 54,000*l.*, in respect of the confiscation of his said estate, and that the commissioners rejected his claim, and their adjudication was confirmed by the Privy Council on appeal. The petitioner, after stating that the said award was erroneous, that his claim was just, and that there were ample funds remaining of the provision so made by the French government in the hands of the Crown for satisfaction of his demand, prayed that right may be done, &c. The Queen referred the petition to the Lord Chancellor, with an indorsement thereon "Let right be done to the petitioner."

Mr. Hill, and other counsel, for the petitioner, and the *Attorney General* and other counsel for the Crown, were heard by the Lord Chancellor on that petition about a-year ago.

Viscount Canterbury presented a similar petition to her Majesty for compensation, amounting to 6000*l.*, for the loss sustained by him in pictures, plate, and furniture, consumed in the fire which destroyed both Houses of Parliament, as the petition alleged, caused by the negligences of her Majesty's servants. This petition was also referred to the Lord Chancellor, with a similar endorsement thereon, and was argued before his Lordship at the beginning of last Trinity Term. The arguments on the ancient law relating to the course of proceeding on petitions of right were nearly the same on both petitions. The following is a short view of those used on the latter petition.

The *Solicitor General*, Sir William Follett, and Mr. Serjeant Manning, for Lord Canterbury.—It was the duty of the Lord Chancellor to issue a commission to certain persons, therein to be named, who would inquire into the facts stated in the petition, as a jury would, and who, after that inquiry, would make a report, in the shape of a verdict or inquiry to the Lord Chancellor. The matter being so put in a train of judicial inquiry, the law, as it bore on the facts, could be discussed before a competent tribunal, from which it would be in

the power of either party to carry the matter, by a writ of error to the Exchequer Chamber and thence to the House of Lords. In the present state of the proceedings, neither the facts nor the law could be discussed to any useful purpose. The facts were not much in question; indeed they were not denied by the counsel for the Crown, who, however, appeared to oppose all further proceedings on the petition. The law of the case was the real point in dispute; and if the petitioner was permitted to have his action in the accustomed form, the whole case could be discussed before a court of law. The petitioner could have brought his action against any common party for losses sustained by the negligence of the servants of that party, but the course of proceeding against the crown, when a subject sustained loss by the negligence of its servants, was not by action in the first instance, but by the form of a petition of right; and all that the Lord Chancellor had to do was to put the matter in a train of judicial inquiry. When the inquiry took place, the *Attorney General* would, of course, appear to represent the Crown, and in that capacity he could demur or plead, or take any other course that might be considered fit to test the application of the law to the facts. To attempt to stop all inquiry, as it seemed to be the purpose of the *Attorney General* on this petition, was contrary to all precedent. The course of proceeding on petitions of right was laid down in Blackstone's Commentaries.^a The right of action against a person whose servants have been guilty of negligence, was stated in Comyn's Digest, title Action on the Case. In any case where negligence was made out against a servant of a person in whose house another man's property was destroyed, it had been held that such persons so suffering had a clear right of action for compensation. The property of the Speaker of the House of Commons had been destroyed by the negligence of the servants of the Crown, in a palace occupied by him with the permission of his Majesty, and the simple question for the Lord Chancellor to decide in the case was, whether a subject so injured had not a right of compensation against the Crown, in the same manner as if the petitioner had sustained a loss from the negligence of the servant of any ordinary individual. They insisted that no precedent could be produced for refusing the commission under circumstances like the present; and they referred to several records in the Year Books, Coke's and Rastall's Entries, and other ancient books of authority, to show that the Lord Chancellor had uniformly referred such petitions to a commission named by himself, to inquire and report.

The *Attorney General*, Mr. Wigram, Mr. Wray, and Mr. Wightman, for the crown. It had been argued for the petitioner that the Lord Chancellor had no discretion on a petition of right, but was bound to issue a commission as a matter of course, without exercising any judgment on the merits of the peti-

^a 3 Vol. 256.

tion. If commissions were to issue in that manner, they would lead to much mischief and absurdity. Suppose that some of the persons excluded from the dinners and balls of her Majesty presented a petition of right, stating that they had a good title to dine and dance with her Majesty, would her Majesty's Attorney General be bound to admit the right of such persons to compensation, and the Lord Chancellor to issue a commission to enquire and report on the subject? Suppose, further, that some persons holding lands in the Forest of Dean in the time of William Rufus, had been ejected by the Crown or its Forester at that period, and that his descendant now presented a petition for compensation, was the Lord Chancellor bound, as a matter of course, to send the subject-matter of that petition to a commission? These were specimens of the many absurdities to which such a practice would lead. Supposing all the facts stated in the petition to be true, which they neither admitted nor denied, it must not therefore be concluded that the petitioner had a right to compensation. The loss of this property happened in the time of William the Fourth, to whom the present Queen stood neither in the relation of heir or executor. The action, if any, must be a personal action, and it could not lie against any representative, because "*actio personalis moritur cum persona*." The petitioner was in the King's Palace by permission, and he asked compensation for a loss sustained while so residing. Could his Lordship say that a guest of William the Fourth, even in his Palace at Windsor, whose property was destroyed by accidental fire there, would be entitled to an action against the Queen for compensation? But, admitting that such actions could be brought, there was no fund out of which compensation could be paid to the petitioner if he succeeded. The privy purse, and all the other property of the Crown, was already appropriated. If such an action could be maintained against the Queen for an accident happening in the time of her predecessor, her Majesty might, by the same rule, be held liable for all losses sustained by the ancestors of some of the subjects of the Crown in the time of Hengist and Horsa. A petition of right could not be maintained, except in cases where there was a clear ground of personal action.

Both the petitions having stood over for judgments—

The Lord Chancellor, now referring first to the petition of the Baron de Bode, said it came before him with the usual indorsement by the Queen, "Let right be done to the party." The course pointed out by the counsel who supported the petition, was, that a commission be issued, and that a report be made to the Lord Chancellor by the Commissioners, in the form of an inquisition, on the facts stated in the petition, and then that a writ be issued. That course was objected to by the Attorney General on behalf of the Crown, and in this state of the proceeding it was said, that it was competent for him (the Lord Chancellor)

to exercise a jurisdiction on the petition, and to dismiss it. But no case was cited in the argument on this or the other petition of right, to shew that he could exercise such jurisdiction. It appeared very strange, that if the jurisdiction existed, no precedent could be found. It appeared to him that nothing remained for him to do in the petition, but to state the course of proceeding that was to be followed. If he had declared his opinion against the petitioners' claim, there would be an end of it. But it appeared to him, that if he were to do anything besides what the endorsement by the Crown directed, that might not be doing right to the party. In the absence of any authority in support of the argument for the Crown, he had ordered a search to be made in the Petty Bag Office for petitions of right, or proceedings on them in that office, because if the Lord Chancellor had ever expressed any opinion on the merits of such petition, it would remain and be found in that office; but if the Lord Chancellor had been in favor of such petition proceeding, in this case it would not remain in that office. Upon the search, no petition was found in the Petty Bag Office, and that shewed that such petitions had been directed to some tribunal for further inquiry. Finding no trace of such petitions in that office, his Lordship then examined the authorities of ancient date, and by all of them he was confirmed in his opinion, that as Lord Chancellor he had no jurisdiction over these petitions. His Lordship cited passages from Staunforde's Pleas of the Crown, title Prerogative, cap 22, and fol. 72a and 73b; from Coke's and Rastall's Entries; Brooke's Abr., 14 State Trials, p. 59; and from 3d Blackstone's Commentaries, p. 256, to the effect that a petit on of right, if the endorsement on it be general "let right be done" &c., must be delivered to the Lord Chancellor, and he should issue a commission to find the right of the party petitioning, and that on inquisition being returned, there was then a record, and the petitioner thus warranted was let in to interplead with the Crown, and the king's attorney general may demur in law, or plead &c. Upon these authorities it appeared, that there was no suit in process until commission issued and inquisition found, and that the petitioner had no *locus standi* in Court until that formal proceeding was first had, after which the attorney general may demur, or take such other steps as may seem fit. The only duty therefore, his lordship had to perform at present, was to let the petitioner proceed in the course laid down. The same course may be taken in the second petition.

Ex parte The Baron de Bode, and Ex parte The Viscount of Canterbury.—July 15th 1840.

Vice Chancellor's Court.

PRACTICE.—PARTIES.

The heir at law is a necessary party to a suit for the administration of real assets, though he may not be beneficially interested.

The testator in this case had directed a free-

hold house to be sold, but without making any disposition of the produce; and a bill having been filed for the administration of his estate, the question was, whether his heir at law ought to be a party. For the plaintiff, who was interested in the personal estate, it was insisted that the direction for sale converted the house into personality; and that the heir, not having any interest, ought not to be a party, and 1 Roper on Legacies, pp. 465, 6, was cited.

The Vice Chancellor said he had a note of a case decided by the late Sir William Grant, where the testator used these words: "I direct my real estate to be sold. I know my heir will become entitled to the freeholds, but I say sell all," and the Master of the Rolls held that the freeholds were converted into personality, and so he (the Vice Chancellor) thought that the testator's direction in this case converted the house into personality; but still he could not say it was so clear that he ought to decide in the absence of the heir at law, and he must therefore be made a party.

Jacob and Blower for plaintiff; *K. Bruce and Stinton* for defendants.

Griffiths v. Pruett, July 10th, 1840. V. C

AGENCY.—STATUTE OF FRAUDS.

If it be clearly established that a purchase was made by a party as the agent of another, the Court will order a conveyance to the principal, though the appointment of such agent may not have been in writing; but if agency is denied and any doubt arises as to the facts, the Court will direct an issue.

The bill in this case was filed for the purpose of obtaining for the plaintiff the benefit of a lease granted to the defendant in the year 1836 by the Dean of York, of a farm and certain premises in the occupation of the plaintiff; and from the statements in the pleadings it appeared that in the year 1835 the Dean of York, having become possessed of the property in question, on the death of a Mr. Thomson, contracted to grant the lease now in dispute to the defendant, in consideration of the sum of 7200*l.* The defendant, after he had obtained the lease, offered to sell it for 8,500*l.*, to the plaintiff, but the plaintiff insisted that the defendant acted entirely as his agent in the contract, and having learnt the terms upon which the lease had been granted, filed his present bill, whereby he prayed that it might be declared that the defendant, in contracting for the lease, contracted on behalf of the plaintiff, and that he might be declared a trustee for the plaintiff for the premises comprised in such lease, subject to a lien for the amount paid by him as the consideration for the grant thereof, and that on the plaintiff's paying off such lien the defendant might be directed to assign the lease to him. The defendant by his answer positively denied agency. Various communications were proved between the plaintiff and his solicitor and the defendant, but that most relied on by the plaintiff, was a letter, dated the 25th of April 1835, from the

defendant to him, in which the defendant said "I have this morning settled the agreement for your farm," and in which he requested the plaintiff to bring him the names of three or four healthy boys from six to ten years old, for the purpose of selecting those to be put in the lease, and effecting the necessary insurance.

Jacobs, Richards and Smythe, for the plaintiff, strongly remarked upon the fraudulent conduct of the defendant, who was the steward and land agent of the dean, in attempting to deprive the plaintiff of the benefit of a lease which the defendant well knew the plaintiff was in treaty for, long before the contract between the dean and the defendant. In fact the dean himself conceived that the defendant was acting as the agent for the plaintiff in the grant which was made, and the defendant ought not to be allowed to take advantage of his connection with the dean, to the prejudice of the plaintiff. *Lees v. Nuttall*, 1 Russ. & M. 53, and 2 M. & K. 819.

K. Bruce and Elmsley for the defendants.—The defendant by his answer denies the agency altogether, and shews that he was in communication with the dean upon the subject of the lease so far back as 1833, but no contract was entered into because the dean was not in a situation to grant the lease till the death of Mrs. Thomson in 1835. The plaintiff was a perfect stranger to the defendant up to the time of the treaty in 1835, and no good reason could be assigned for his taking upon himself so much trouble to advance the plaintiff's interests. The defendant having denied agency, the plaintiff must make out an agreement, and for that purpose he is driven to rely upon the letter of the 25th of April 1835, which is deficient in every thing required by the rules of evidence and the statute of frauds. It defines neither estate, interest, price, nor person. *Burtlett v. Pickersgill*, 1 Cox, 15; *Couth v. Jackson*, 6 Ves. 12; Sugd. V. & P. 9th ed. v. 2, pp. 132, 138, 139.

Jacob in reply.—There is a material distinction between agency and trusteeship. If the lease had been granted to the defendant as the trustee of the plaintiff, then some writing might have been necessary to establish such a relationship, and the arguments respecting the statute of frauds might have been applicable, but this was not the plaintiff's case. The plaintiff never intended the defendant to be his trustee, and therefore no memorandum was necessary prior to the conveyance to the defendant, he taking it as the plaintiff's agent, for up to that time *omnia rite acta*, and no objection could be made to his proceedings. The agency has been clearly established, and by accepting it the defendant precluded himself from entering into any contract except on behalf of the plaintiff.

The Vice Chancellor said, that the only question to be determined between the parties was one of fact, and that the statute of frauds was quite out of the question, for if it was clearly made out that the defendant in taking the lease acted as the agent for the plaintiff, then the plaintiff was undoubtedly entitled to

the benefit of it. It had long been decided with reference to that particular section of the statute of frauds, which directs agreements &c. for the sale of lands to be in writing, that an agreement signed by an agent appointed by parol is binding on the principal. The plaintiff says it was agreed that the defendant should negotiate with the dean for the lease in question upon the best terms that could be made so as the purchase money should not exceed 9000*l.*, and that the defendant should advance half the purchase money, the plaintiff paying him for such advance 200*l.* a-year. The plaintiff's case is completely met by the defendant's answer, and the Court always gives great weight to a defendant's answer where it can fairly do so. If the circumstances were very clear on the one side, and equally clear on the other, so that the Court would only have to balance the testimony, there would be no difficulty in coming to an immediate decision; but the letters of the defendant are so contradictory that the only inference is, the defendant allowed his mind to float in such a loose manner that he was disposed to give a different version to the facts to that which could be borne out by the letters, and the Court would therefore give much less credence to the statements in the answer than if this had not been apparent. Under these circumstances it was his duty to send the matter before a tribunal that would not only have the opportunity of examining all the documents and witnesses that had been produced, but the parties themselves; and he therefore directed two issues, 1st, whether on the 21st of April 1835, it was agreed and determined that the defendant should negotiate &c. as stated in the bill, with liberty to indorse special matter on the *postea*; and 2nd, whether it was agreed between the plaintiff and the defendant that the defendant should purchase of the dean the lease in question as the agent of the plaintiff. All further directions to be reserved.

Milner v. Singleton, July 10th, 11th & 14th.

Rolls Court.

PRACTICE.—PARTIES.—COSTS.

Circumstances under which the Court will order a cause to stand over for want of parties, but will not give the costs of the day.

The original bill in this case had been filed for a specific performance of a contract entered into by the defendant for the sale of his share in a brewery, to which he was entitled in conjunction with certain other parties as legatees. The defendant having become bankrupt, a supplemental bill was filed against his assignees, and the cause now coming on for hearing, an objection was taken by their counsel for want of parties, on the ground that the bill not only prayed a performance of the contract by the assignees, but also an alternative that, in the event of their refusing to concur in the sale to the defendant, an account might be taken of the testator's property, and the share of

the bankrupt therein ascertained, with various other directions applicable to the general assets of the testator, and that therefore all parties beneficially interested in the property of which the defendant claimed a share ought to have been made parties.

The *Master of the Rolls* allowed the objection, and ordered the cause to stand over for a week, in order to allow the plaintiff to amend his bill by adding the necessary parties.

The plaintiff's counsel then asked for the costs of the day, and cited *Attorney General v. Hill*, 3 M. & Cr. 247; but the *Master of the Rolls* refused the application, on the ground that the defendants had not raised the objection by their answer, observing at the same time that if the Lord Chancellor established a different practice, he should abide by it.^a

James Russell for plaintiff; *Bethell and Walker* for defendants.

Stocken v. Belcher and others, July 3, 1840.

Queen's Bench.

[Before the Four Judges.]

ACT OF PARLIAMENT.—DATE OF NOTICE.— CLEAR DAYS.

The words in the 19th sect of the 4 & 5 W. 4, c. 51, "which summons shall be served upon every such person ten days at least before the time appointed in such summons," mean ten clear days.

A summons therefore which was dated and served on the 20th, requiring the party to appear on the 30th, was bad.

Where, in a statute directing how a notice is to be given, the phrase "— days at the least" or "— clear days" is used, it must be taken to mean so many days exclusive of the day on which the notice is given.

This was an action of trespass for seizing a table belonging to the plaintiff, and detaining the same till he paid the sum of 5*l.* The defendant pleaded not guilty. At the trial before *Tindal, C. J.*, at the Cambridge Spring assizes, 1839, it appeared that the plaintiff was a tradesman, residing in the town of Cambridge, and that the defendant was a magistrate for that borough. On the 20th of September, 1836, one John Sykes, an officer of excise, laid an information before the defendant, under the provisions of the statute 6 G. 4, c. 81, s. 25, for that the plaintiff, "not being a person licensed to carry on the trade of a dealer in

^a In the case referred to, the reason assigned by the Lord Chancellor for giving the costs of the day was, that although the defendants had no interest in the objection, the record was so framed that it was impossible to proceed effectually with the cause without the parties required. Is not this almost always the case when a cause is ordered to stand over for want of parties? and if so, what becomes of the rule that defendants are not entitled to costs of the day unless the objection is raised by the answer? *Ed.*

who tried the cause was perfectly satisfied with the verdict, and no objection is made to his direction, or the admission of evidence. If the plaintiff was not prepared to proceed safely to trial on that occasion, it was in his power to withdraw the record. In *Cobbold v. Grinnell*, the application was made at the instance of the defendant, who had no power over the record, and therefore, on that account, there might be an additional reason for the Court interfering. The case was, therefore, different from the present. For these reasons, no rule can be granted to the effect prayed.

Rule refused.—*Yates v. Dublin Steam Packet Company*, E. T. 1840. *Excheq.*

DEMURRER.—SEVERAL COUNTS.—DECLARATION.

If a demurrer professes to be to the whole declaration, and it assigns separate causes of demurrer to each count, it is a demurrer to the whole declaration.

Demurrer to a declaration professing to be to the whole declaration. It then proceeded to assign special causes of demurrer to each of the counts of the declaration.

Hurlstone supported the demurrer.

Butt was heard in support of the declaration. He submitted that only one of the counts was defective, and therefore, as the demurrer professed to have been pleaded to the whole declaration, it was too wide, and therefore the plaintiff was entitled to judgment.

Hurlstone, in support of the demurrer, contended that the commencement of the demurrer was immaterial, the assignment of the causes of demurrer being the substantive part of the demurrer. One of the grounds of demurrer was therefore available, and consequently the defendant was entitled to judgment.

Per Curiam.—One count of the declaration is clearly bad; the demurrer, however, professing to be to the whole declaration, is bad, as both counts are not bad. The judgment of the court must therefore be for the plaintiff.

Judgment for the plaintiff.—*The Parrett Navigation Company v. Stower*, E. T. 1840, *Excheq.*

Law of Principal and Factor Amendment.

[For second reading.]

Masters in Chancery.

For improving Grammar Schools.

[In Committee.]

House of Commons.

Small Debt Courts for

Liverpool,

Marylebone,

Wakefield Manor.

Metropolitan Police Courts. [In Committee.]

To extend the Term of Copyright in Designs of Woven Fabrics. Mr. E. Tennant.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

[In Committee.] Lord J. Russell.

To extend Freeman and Burgesses' Right of Election. Mr. F. Kelly.

To amend the County Constabulary Act.

Mr. F. Maule.

To consolidate and amend the Law of Sewers.

[In Committee.]

Summary Conviction of Juvenile Offenders.

[Passed.]

Sir E. Wilnot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage. [Postponed]

Mr. W. Miles.

To abolish capital punishment in all cases except Murder. [In Committee.] Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

To exempt stock-in-trade and other personal property from being liable to be rated to the relief of the poor. The Attorney General.

[In Committee.]

Affirmations.

[In Committee.]

Marriages Act Amendment. [In Committee.]

Registration of Voters. [For second reading.]

Right of Voting. [For second reading.]

Insane Prisoners. [For second reading.]

Turnpike Trusts. [Passed.]

Parochial Assessments. [In Committee.]

Prevention of Bribery. [For second reading.]

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Copyholds Enfranchisement. Ld. Brougham.
[In Select Committee.] Withdrawn.

For facilitating the Administration of Justice in Equity. Lord Chancellor.

[Passed.]

For the commutation of Manorial Rights
[For second reading.] Withdrawn.

Lord Redesdale.

Inclosure Acts Amendment.

[For second reading.]

Settled Estates Drainage.

[In Select Committee.]

THE EDITOR'S LETTER BOX.

We shall attend to the General Index of the Twenty Volumes of the *Legal Observer*, and hope to make it sufficiently full for every useful purpose. Every Number of the Work may be obtained at the Office, No. 67, Chancery Lane.

The letters of T. B. and "An Articled Clerk," have been received.

We shall soon be able to give a condensed statement of the contents of the various letters not already noticed.

The Legal Observer;

SATURDAY, JULY 25, 1840.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

PARLIAMENTARY PROCEEDINGS.

THE REGENCY BILL.

THE Regency Bill has been brought in, and his Royal Highness Prince Albert, under it, is to be appointed Regent, in the event therein mentioned. This is in conformity with the view which we have already taken of this question.* We then noticed the precedent in the case of her present Majesty and the Duchess of Kent. The powers given to the Duchess of Kent were limited and defined by the act constituting her Regent (1 W. 4, c. 2). She was to have full power in the name of her daughter, and under the style and title of regent, "to exercise and administer, according to the laws and constitution thereof, the regal power and government of this realm, and to use, execute, and perform all prerogatives, authorities, and acts of government, which belong to the king or queen of this realm." (s. 11). But by s. 9 she was restrained from giving the royal assent to any bill or bills of parliament for repealing or varying from the order of succession to the crown, as regulated by stat. 12 W. 3, c. 2, the act for the Uniformity of Public Prayer, 13 & 14 Car. 2, c. 4, and the act of the fifth year of Queen Anne, for securing the Church of Scotland. Following this precedent, it is proposed to be enacted by the bill just introduced, that if at the demise of her Majesty there shall be issue who shall become and be king or queen of this realm,

whilst under the age of eighteen years, his Royal Highness Prince Albert, the consort of her Majesty, shall be the guardian, and shall have the care, tuition, and education of such issue, until such issue shall attain the age of eighteen years; and shall, till such age, have the disposition, ordering, and management of all matters relating thereto; and Prince Albert shall also, until such issue shall attain the age of eighteen years, and no longer, have full power in the name of such issue, and in his or her stead, and under the style and title of Regent of the United Kingdom of Great Britain and Ireland, to exercise and administer, according to the laws and constitution thereof, the royal power and government of this realm. By s. 4, the king or queen is not to marry under the age of eighteen, without the consent of the Regent, and the assent of both Houses of Parliament; and abetting such marriage is to be high treason. Then follows the same proviso as to the acts which the Regent may not do. He is not empowered to give the royal assent to any act altering the succession, or the acts for settling the churches of England and Scotland. There is also this further proviso, that in case Prince Albert shall marry a person professing the Roman Catholic religion, or absent himself from the United Kingdom, his powers under the act shall cease and determine. We presume that this bill will pass into law with very little remark being made in either House.

THE COPYHOLD BILL

The Copyhold Enfranchisement bill, introduced by Lord Brougham, and so fully
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* See *ante*, p. 65.

given in this work, has been withdrawn by that noble and learned lord, for the present session, and Lord Redesdale at the same time withdrew his bill on the same subject. This is a great disappointment to us, and will be felt as such by a vast number of persons throughout the country interested in this species of property, who reasonably expected the bill to pass. Still we wish to call attention to what was said on the occasion of its being withdrawn, and which has been, as we understand from those who heard it, very imperfectly given in the public prints. Lord Brougham went fully into the matter, and in the first place, stated his willingness to abandon the compulsory clauses as introduced into his bill, if it was the pleasure of the House, and then went on to explain the difference between the two bills. By his bill, the lord and three-fourths of the tenants of any manor, might agree, under the direction of the Tithe Commissioners, to convert their copyhold lands into freehold, and thus entirely to change the tenure. By Lord Redesdale's bill the tenure was not to be changed, the land was still to remain copyhold, but it might be relieved from some of the most oppressive burdens affecting that kind of tenure. Heriots and fines uncertain, might under it be commuted for fines certain and a rent-charge payable to the lord; and this arrangement was also to be made under the direction of the Tithe Commission. This was the substantial difference between the two bills, for the framework and the great majority of the clauses were the same in both bills. He much regretted that the bill which he had introduced could not be carried through in the present session, but the simple reason was, that when he returned to town, after the Easter recess, he found another very important measure, the Lord Chancellor's bill for appointing new Equity Judges, before the House of Lords; that this bill was referred to a Select Committee composed of nearly the same members as were appointed to consider the Copyhold Bill; that he was, therefore, unable to obtain that attention to the provisions of the latter bill which its importance demanded, and that under all these circumstances, the only course left him to pursue was to withdraw it for this session; but he only reconciled himself to this course in the hope and confident expectation that it would pass the House early next session; and for this purpose he pledged himself to introduce it the first opportunity, and he would then be

willing that both bills should be referred to the Select Committee, by whose decision he would be content to abide. Lord Lyndhurst then followed, and fully admitted that this important question must be speedily settled, and for that purpose he would be most ready to concur with Lord Brougham at the earliest possible period of the next session in framing a measure which might be satisfactory to the country. We sincerely hope, therefore, that although copyhold reform has made slow progress, yet that it has made some progress in the present session, and that its necessity is now admitted on all hands.

THE EQUITY JUDGES BILL.

The new bill for the appointment of the Equity Judges has been read a first time in the House of Commons, and was appointed for a second reading on Thursday last. The press of other business, however, prevented its coming on; and on Sir Edward Sugden requesting a day should be named, the Attorney General stated his intention of fixing an early day. We have reason to think that it has stood over in order that some of its details might be well considered, for it is to be remembered that many things have to be filled up in the lower House which need not be attended to in the Lords. Salaries and compensations have come in, and these are often the points of the greatest difficulty in a measure of this nature; but we hope that no unnecessary delay will take place. At the same time, although we are, and have been anxious that this bill should pass, it must not be understood as a settlement of the great question of Chancery Reform. It will afford, as we believe, a remedy for one part of the present grievances; but unless followed or accompanied by other reform, it will do but little for the suitor. The hearing of causes will be facilitated, but the other stages of the cause must also be expedited and assisted. At the same time, we have always been of opinion that it is no reason, because all cannot be done that should be done, that a part should not be accepted. We shall watch the further proceedings with great interest.

COMPENSATION TO CHURCH LESSEES.

THE question of compensation to church lessees for what is called their tenant right, has been much discussed of late in Parliament; and as it affects a large class of persons, it may be useful to state the authorities on the point. It is now quite clear, both at law and in equity, that although it has been the constant practice of a landlord to renew, yet such a custom, if there be no covenant, will not entitle the lessee to demand a renewal of his lease.^a But still this usage of renewal, although in fact it rests greatly on favour, is guarded by courts of equity, and enhances the price on any sale or dealing with it. We shall see that this is recognised as the present rule of property on the subject by conveyancers. "The favour which is shown to old tenants, (says Mr. Butler,^b) by granting them a renewal preferably to a stranger, has given them in the eye of the law an interest beyond their subsisting term; and this interest is generally termed their tenant right of renewal. This is particularly applicable to leases from the crown, from colleges, or from other corporations. The renewal is still a matter of chance and favour, but is so far valuable that it enhances the price of the property on sales; and the right of parties to this chance of renewal is guarded by courts of equity." Mr. Jarman, in his edition of Bythewood's Conveyancing, says, "the custom of renewal enhances the value of the lessee's interest."^c And Mr. Rouse, in his Practical Man,^d gives a table for valuing church and collegiate leases. We find this practice of conveyancers is also recognized by Courts of Equity. Thus, in *Lee v. Vernon*,^e "it is laid down as having been an established practice to consider those who are in the possession of lands under leases for lives, as having an interest beyond their subsisting term; and this interest is usually denominated the tenant-right of renewal, and though not any certain or even contingent estate, there being no means of compelling a renewal, yet it is so adverted to in all transactions relative to leasehold property, that it influences the price in sales, and is

often an inducement to accept of it in mortgages and settlements;" and in *Watson v. Master, &c. of Hensleigh Hospital*,^f the same principle is recognized by Lord Alvanley, M. R., especially where there are improvements by the tenants.

The Select Committee of the House of Commons on Church Leases, which made its report in 1839, admitted the rights of church lessees to some compensation, although it did not admit any similar claim on the part of the lessees of the crown; and in the act for settling Church Temporalities in Ireland, (3 & 4 W. 4, c. 37,) the claims of all lessees holding under a usage of renewal are amply provided for. Under all these circumstances we think it would be difficult to legislate on this subject without in some way recognizing the principle of compensation, so far at least as leases held under the church are concerned.

In other leases it has been held that a tenant's reasonable expectation of a renewal cannot be regarded in awarding compensation to him for the occupation of the premises under an act of parliament;^g although if the act require compensation to be made for any interest, whether for good-will, improvements, tenant's fixtures, or otherwise, which they now enjoy, it would include such an expected advantage.^h

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. V.

ANNUAL INDEMNITY ACT,

3 Vic. c. 16.

An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and for extending the Time limited for those Purposes respectively until the Twenty-fifth Day of March One thousand eight hundred and forty-one; and for the Relief of Clerks to Attorneys and Solicitors in certain Cases.

[19th June, 1840.]

1 G. 1, st. 2, c. 13; 13 C. 2, st. 2, c. 1; 25 C. 2, st. 2, c. 2; 30 C. 2, st. 2; 8 G. 1, c. 6; 9 G. 2, c. 26; 18 G. 2, c. 20; 6 G. 3, c. 53; 9 G. 4, c. 17; 10 G. 4, c. 7. Persons who have omitted to qualify themselves as required by the recited acts indemnified and allowed further time till 25 March 1841.

2. Indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish Act of 2 Anne.

^f 14 Ves. 324.

^g *Res v. Liverpool and Manchester Railway Company*, 6 Nev. & M. 186.

^h *Ex parte Farlow*, 2 B. & Adol. 341.

^a *Baynham v. Guy's Hospital*, 3 Ves. 298; *Eaton v. Lyon*, 3 Ves. 694; *Iggulden v. May*, 9 Ves. 331; overruling *Cooke v. Booth*, Cowp. 819.

^b Butl. Co. Litt. 290 b, xi; and see 1 Prest. Abst. 15.

^c 3d edit. p. 395.

^d 3d edit. p. 157.

^e 5 B. P. C. 10.

3. Not to indemnify persons against whom final judgment has been given.

4. Not to exempt justices acting without legal qualification.

5. Admissions to corporations may be stamped after the time allowed.

6. *Indemnity to persons who have paid the duties on indentures to serve as clerks to attorneys, &c. but have neglected to cause affidavits thereof to be made. Neglect of attorneys, &c. in taking out their annual certificates not to disqualify the persons who have served them.*—

"And whereas many persons who may have paid the proper stamp duties, either before or within six months after the execution of the contracts in writing entered into by them to serve as clerks to attorneys or solicitors, scriveners or notaries public, in Great Britain, have omitted to cause affidavits to be made, and afterwards to be filed in the proper office, of the actual execution of such contracts, and have also omitted to cause such contracts, and the indentures thereof, or the assignment of any such indentures, to be enrolled within the time in which the same ought to have been done; and many solicitors, attorneys, notaries public, and others have omitted to take out annual certificates, or to enter the same in the proper office; and many infants and others may thereby incur certain disabilities:" For preventing thereof, and relieving such persons, be it enacted, that every person who shall, either before or within six months after the execution of such contract or indenture, have paid the proper stamp duty in that behalf, and who at the passing of this act shall have neglected or omitted to cause any such affidavit or affidavits as aforesaid to be made and filed, or such contract or indenture or assignment to be enrolled, and who, on or before the first day of Hilary Term one thousand eight hundred and forty-one, shall cause such contract or indenture or assignment to be enrolled with the proper officer in that behalf, and one or more affidavit or affidavits to be made, and afterwards to be filed, in such manner as the same ought to have been made and filed in due time, shall be and is hereby indemnified, freed, and discharged from and against all penalties, forfeitures, incapacities, and disabilities in or by any act or acts mentioned and incurred or to be incurred for or by reason of such neglect or omission; and every such affidavit and affidavits so to be made, and which shall be duly filed on or before the first day of Hilary Term one thousand eight hundred and forty-one, shall be as effectual to all intents and purposes as if the same had been made and filed within the respective times the same ought, by the laws now in being for that purpose to have been made and filed; and that the respective officer or officers who ought to receive, file, enter, or register such contract or indenture, or affidavit or affidavits, shall not refuse to receive, file, enter, or register the same by reason that the attorney, solicitor, or notary public to whom such infant or other person shall have been articulated or assigned, or have contracted to serve, shall have neglected to

take out his annual certificate, or to register the same, but such officer or officers are hereby directed and empowered to receive, file, enter, or register the same, notwithstanding such omission; and that every person who shall have regularly served any attorney or attorneys, solicitor or solicitors, notary public or notaries public, for the term of years required by law, shall not be prevented or disqualified from being admitted an attorney, solicitor, or notary public, by reason of any omission of the person or persons to whom he served for the same term, or for any part thereof, having so neglected to take out his annual certificate, or to register the same, provided that such person is otherwise entitled to be created and admitted to such office by the laws now in force relating thereto.

7. *Defects in the service, &c. of attorneys not to disqualify persons who have served them.*— And be it enacted, that in case the attorney, solicitor, proctor, or notary to whom any person shall have duly served his clerkship under articles in writing for that purpose shall after such service of the clerk be struck off the roll in consequence of some defect in the service under the articles of clerkship or of the admission and enrolment of such attorney, solicitor, proctor, or notary, the person who has so duly served his clerkship shall not be prevented or disqualified from being admitted and enrolled as an attorney, solicitor, proctor, or notary, nor liable to be struck off the roll if admitted, by reason of any such defect as aforesaid, provided that such clerk or person be otherwise entitled to be admitted and enrolled according to the laws now in force relating thereto.

8. *Applications for striking attorneys off the roll for defect in articles, &c. to be made within twelve months of admission.*—And be it enacted, that no person who has been admitted and enrolled and in actual practice as an attorney, solicitor, proctor, or notary, shall be liable to be struck off the roll for or on account of any defect in the articles of clerkship, or the registry thereof, or the service under such articles, or of his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment.

9. *In case of articles being lost the Court may order a copy thereof to be enrolled.*—Provided always, and be it enacted, that in any case in which the original articles of clerkship shall have been or shall hereafter be lost or destroyed before or after payment of the duty, it shall be competent to either of her Majesty's Superior Courts at Westminster to direct the enrolment of a copy of such articles, upon being satisfied, by such evidence as shall appear to the Court sufficient to prove the loss of such original articles, of the authenticity of the paper proposed for enrolment, and that the duty has been duly paid upon such articles or upon a copy thereof, to be shown by the denoting or other appropriate stamp, as the case may require, and provided such Court shall be satisfied that the clerk has duly served

under such articles from the time of the execution thereof, or for such time as shall appear satisfactory to the Court under the circumstances of the case.

10. *The word "months" in 7 G. 4, c. 44, to mean calendar months.*—"And whereas by an act passed in the seventh year of the reign of his Majesty King George the Fourth, to allow, until the tenth day of October one thousand eight hundred and twenty-six, the enrolment of certain articles of clerkship, and for other purposes therein mentioned, it was enacted, that it should not be lawful for the Commissioners of Stamps, or any of their officers, to stamp, under any pretence whatever, after the expiration of six months from their date, any articles of clerkship to attorneys or others, as therein specified: And whereas the using of the word 'months' in the said last-mentioned act, in this respect, without the addition of the word 'calendar,' occasioned mistakes and inconveniences;" be it enacted, that from and after the passing of this act the word "months" used in the said last-mentioned act, so far as the same relates to the stamping of articles of clerkship to attorneys and others therein specified, shall be understood to mean calendar months.

11. *Indentures, &c. may be stamped before last day of Michaelmas Term 1840, if application was made therefor within six calendar months from the dates thereof.*—"And whereas several persons bound to serve as clerks or apprentices to attorneys or solicitors have applied to have the indentures or contracts of such clerkship stamped after the expiration of six lunar and before the expiration of six calendar months from the date thereof;" be it enacted, that it shall and may be lawful for the Commissioners of Stamps and Taxes, or any of their proper officers, at any time before the last day of Michaelmas Term one thousand eight hundred and forty, to stamp any articles of clerkship, contract, indenture, or other instrument whereby any person hath become bound to serve as a clerk or apprentice, in order to his admission as an attorney or solicitor in any of the Courts of Law or Equity, although the period of six calendar months from the date thereof hath now elapsed, upon payment of the proper duty payable in respect of the same, and of the further sum of five pounds by way of penalty, provided it shall be proved to the satisfaction of the said commissioners that application was made to them or to their proper officer to have such articles, contract, indenture, or instrument stamped within six calendar months from the date thereof.

12. Not to restore persons to any office avoided by judgment.

13. Evidence under the General Issue.

It will be observed by the 8th section, that the recent alteration introduced into these acts has been continued for restricting to twelve months applications for striking attorneys off the roll for defects of service, &c. The 9th clause is intended to meet some recent cases

of the loss of articles of clerkship, upon the Court being satisfied that the clerk has duly served. It is worthy of notice that the relief extends to cases, whether before or after the payment of the duty. The 11th section provides that articles may be stamped before the last day of Michaelmas Term, if application was made within six calendar months. This is to remove the difficulty in the 7 G. 4, c. 44, which was understood to mean lunar months.

NOTICES OF NEW BOOKS.

The New Practice of the Courts of Law at Westminster: with Forms embodied in the Text for the Use of Town and Country Practitioners. By William Bagley, of the Inner Temple, Barrister at Law. London: A. Maxwell, 1840.

AMONGST the improvements which, at no distant day, we trust will be effected in our legal publications, is that of the Practice of the Courts, or rather the books in which the Practice is stated. The unsettled condition of the practice at Common Law is sufficiently shewn by the inconvenient expedient to which Mr. Tidd felt it necessary to resort, of adding supplement to supplement, and then consolidating them into a separate book, appended to his larger original work. We presume the veteran practitioner would have incorporated the whole of his labours into one publication, if it had appeared probable that the Code of Practice was really in a settled state. We trust that the changes which each session of Parliament for many years has produced, will at length cease, and that the plan of the Common Law Commissioners will be carried into effect, of an official or authorized Book of Practice, adapted equally to all the Common Law Courts. The abolition of the Equity Side of the Court of Exchequer, will tend to facilitate the entire uniformity of practice in those Courts.

There ought to be no difficulty in ascertaining what the practice of the Court is upon every point which may arise in the progress of an action. Justice should be administered according to well defined and settled rules. The practitioner should not be subjected to the grievance of having to consult various works of uncertain authority, and running the risk of mistakes against which he cannot guard. Much valuable time, for which there is no adequate remuneration, is lost in collecting information upon various points of practice. For the

sake of the profession, therefore, we trust that an authorized Book of Practice will, ere long, be prepared.

In the meantime, we find a new name added to the list of Instructors in this branch of professional duty. Whether there was room for another competitor may be doubted. In a field long occupied by such veterans as Tidd, Chitty, and Archbold, there remains little to be achieved. The law, however, like all other subjects, is doomed to endless competition. No writer, however eminent or useful, can expect, in these days, to engross any department to himself. Besides the constant rivalry which takes place in every branch of law and practice, new attempts are made to remodel the old methods, and arrive by some shorter or easier means at the desired result.

The Author before us has attempted to combine, as it were, the learning and scientific method of Tidd, with the practical familiarity of Impey, and to condense within the compass of a volume, not only the substance of the statutes, rules, and decisions relating to proceedings at law, but minute instructions for taking every step in such proceedings.

Mr. Bagley, whose work is above referred to, is favorably known to the profession as the author of a book on the practice at the Judge's Chambers, comprising a large and important branch of professional business. His present effort is of a more ambitious character. In the preface he states that—

“Able and elaborate as many of the treatises on Practice now before the public undoubtedly are, the observation of others, confirmed by his own experience, suggested to the writer the possibility of constructing a practical work better adapted to the wants of an extensive branch of the Profession. The introduction of distinctions founded on reported decisions, proceeding for the most part on circumstances peculiar to the case under consideration, and the numerous references to multiplied cases identical in principle, however serviceable to those who resort to the reports as to an armoury, from which they may select weapons for attack or defence, present formidable obstacles to the mere practical student, whose difficulties are not diminished by the necessity for constant reference to separate volumes, or distinct portions of the same work. In those respects, the modern treatises contrast strikingly, and in the opinion of some persons not advantageously, with the works of Serjeant Sellon and Mr. Impey, which for many years had an extensive, and it may therefore be presumed, a deserved reputation.

“In the present volume an attempt has been made to collect, under appropriate titles, the statutory enactments and judicial regulations, together with those practical rules which have

been established or sanctioned by the authority of express adjudications; and to point out the course of proceeding which falls within the peculiar province of an attorney or agent. Each division concludes with the forms or precedents most frequently required in practice, a familiar acquaintance with which is indispensable to every student anxious to understand any practical branch of the law. The references to reported cases are confined to the latest decisions, or to those in which many previous decisions on the same point have been cited; and the present volume has been kept within a convenient compass, by inserting in the text the names only of the parties to each case, referring the reader who requires to know the volumes in which such case is reported, to the table of cases prefixed to the work. The arrangement of the subjects treated of, will be readily comprehended by a reference to the table of contents, which will be found to include many topics of great practical importance not before united in a book of practice. The division of the subject-matter into distinct titles, and the distinguishing of the subdivisions by different descriptions of type, with the addition of a marginal summary and a remarkably full index, afford combined mechanical facilities for reference, which it is hoped may not be found altogether useless.”

The following is a summary of the scope of the work :

1. Of the Superior Courts of Law and their officers.
2. Of articulated clerks, attorneys, and agents.
3. Of the business of the Courts.
4. Of proceedings by civil action.
5. Of serviceable process and appearance.
6. Of the declaration and correlative proceedings.
7. Of pleadings, issues, and demurrers.
8. Of the trial and its incidents.
9. Of costs.
10. Of judgments, final and interlocutory.
11. Of executions and the sheriff's duty.
12. Of motions, summonses, and affidavits.
13. Of incidental proceedings previous to trial.
14. Of arrest, bail, &c.
15. Of the means of terminating an action without trial.
16. Of incidental proceedings before and after judgment.
17. Of the removal of causes from inferior courts.
18. Of ejectment and mesne profits.
19. Of error and false judgment.
20. Of extraordinary remedies and matters of exclusive jurisdiction.
21. Of real actions and exchequer process.

Mr. Bagley must not expect to take immediate rank amongst the text-books of practice, or the authorities which are cited in Court on contested points. He must be content to wait for that legal reputation which time and experience only can confer. In the absence, however, of new editions of the old standard works, the present volume

may be usefully consulted. It possesses the advantage of comprising within one volume a comprehensive, though very concise, view of the Common Law Practice, and appears full enough for all ordinary occasions.

As an example of the manner in which the work is written, we extract the following summary relating to an *Attorney's Lien on Documents and Money*.

"An attorney has a lien on deeds, or writings, which come into his hands in the course of his profession, for any balance due to him for costs from the party depositing the documents; but the lien is only commensurate with the right which the party depositing the papers has therein, *Simons v. Bluche*. An attorney acting as commissioner under the Fines and Recovery Act, (3 & 4 W. 4. c. 74,) has a lien for his fees in taking the acknowledgement upon deeds which fall into his hands. *Exp. Grove*

"An attorney is not entitled to retain even drafts, or copies of deeds, for which his client has paid, if the latter think proper to demand them. *Exp. Horsfall*; and if he refuses to give them up, he may be compelled. *Exp. Holdsworth*

Practical Directions.—"Apply to the court for a rule *nisi*, or to a judge at chambers, for a summons, calling upon the attorney to show cause why he should not deliver up the documents upon the payment of what is due to him. The application can only be entertained at the instance of the party who deposited the papers. In *re Thornton, Exp. Smart, Exp. Crisp*; and against the party with whom the deeds were actually deposited, *Exp. Roy*; facts which should clearly appear upon affidavit. If the application be made to the court, and the rule is made absolute, serve the rule on the attorney, and if he disobeys it, move the court for an attachment. If a judge makes an order, serve it on the attorney; and in case of his disobedience, make the order a rule of court, and then move for an attachment: but the court will not grant a rule in the alternative, requiring an attorney to deliver up papers, or for an attachment in case of non-delivery, *Roscoe v. Hardman*.

"An attorney has also a lien for the amount of his costs as between attorney and client, on any money belonging to his client which comes into his possession, *Watson v. Musket*; or if money be recovered in the course of a suit, the attorney may give notice that it should not be paid over to his client until his lien is satisfied; and after such notice, the client's release will not bar the attorney's claim. *Gould v. Davis*.

"When the attorney refuses to give up money belonging to his client, the courts will interpose upon the application of the client. *Exp. Sharpe*; but not of a third party. In *re Fenton*; and the application can only be entertained against an attorney of the court, and not against one who practises in the name of an attorney of the court. *Sharp v. Hawker*.

Practical Directions.—"If there be a cause in court, apply to a judge at chambers for a

summons, calling upon the attorney to show cause why he should not be ordered to pay over the money. If the judge make an order, serve it on the attorney, and give a motion paper to counsel, to move to have the order made a rule of court, which is of course and does not require a rule to show cause. (*Wilson v. Narthorp*.) If the rule is not obeyed, instruct your counsel to move for an attachment. When there is no cause in court, it seems the application should not be made at chambers. *Exp. Higgs*. In such case instruct counsel to move for a rule *nisi* upon a proper affidavit; the costs of the application may be included in the rule. The rule must be served, and will be made absolute upon an affidavit of service if no cause be shown; but it must be made absolute before the court will grant an attachment. (*Twiss v. Fry*). If the amount owing to the client cannot be ascertained without a reference, the rule is drawn up for a reference to the master to ascertain the amount due, serve the rule with the masters' appointment, and attend the reference. Afterwards serve a copy of the allocator, and if the amount found to be due by the master pursuant to the rule of court be not paid, upon an affidavit of the fact and service of the allocator, the court will grant a rule for an attachment, but it is only a rule *nisi* in the first instance. (*Ryan v. Furnell*.) Serve the rule *nisi* on the attorney personally, and it will be made absolute upon affidavit of service, if no cause be shown."

It will be observed that a very concise statement of the law is thus given, and then follow the instructions for carrying it into effect. The plan of giving only the name of the case, and leaving the reader to find the reporter in the table of cases may save a little space, but we prefer the old method. We think great pains have been taken in condensing the doctrines under each head, and the practical directions relating to them. As much has been done, according to the plan of the book, as could be expected; but it cannot supersede the larger works to which the practitioner must still resort for fuller and more complete information.

NEW BILLS IN PARLIAMENT.

ECCLIASTICAL DUTIES AND REVENUES.

This Bill, as amended in committee, to carry into effect, with certain modifications, the fourth report of the Commissioners of Ecclesiastical Duties and Revenues, recites the propositions of the fourth report of the commissioners of ecclesiastical duties and revenues, that before the commission expired certain alterations had been intended in those propositions, and the expediency of effecting them with further alterations.

It provides that in future the several Chapters shall consist, in Christchurch, Durham

and Westminster, of a dean and six canons; in every other cathedral in England, and in the Royal Chapel of Windsor, of a dean and four canons; and in Wales, of a dean and two canons. It then specifies in detail the order of suppression of the other canonaries, and creates a fourth canonry at St Paul's and Lincoln. Sec. 1—16.

It fixes the order of appointment to the canonries of Canterbury, and takes away the chapter's right of election to the deaneries and canonries of the old foundation. s. 17—20.

It fixes the qualification of deans and canonries. Sec. 21.

It repeals the custom of appropriating separate estates to deans and canons, limits their incomes in England, and makes provision in detail for the improvement of certain ill-endowed deaneries, arch-deaconries, and canonries. ss. 22—35.

It vests in the bishops all patronage held in right of separate estates, and regulates the remaining patronage of the chapters. ss. 36—38.

It dissolves the corporations of vicars choral, priest vicars, custos and vicars, and minor canons; and regulates the future number, emoluments and qualification of minor canons. ss. 39—42.

It gives power to alter the statutes of chapters in conformity with the changes made by the act. s. 43.

It suppresses all sinecure rectories in the sole patronage of the crown, or of any ecclesiastical corporation, and gives power to purchase and suppress those in private patronage. s. 44.

It vests the endowments of all suppressed dignities and benefices and the separate estates of members of chapters, in the ecclesiastical commissioners. ss. 45—50.

Residence houses not wanted are to be sold. s. 51.

The treasurer of Queen Anne's bounty is to pay over to the commissioners the fund accumulated in his hands under the acts for suspending appointments and protecting the revenues of vacant dignities. s. 52.

The commissioners are to provide out of the funds thus placed at their disposal for the cure of souls in parishes where such assistance is needed, after appropriating part to certain purposes specified in the act.

The endowments accruing to the commissioners from Wales are to be appropriated solely to Wales, and before any endowments are diverted from the diocese from which they have accrued, the bishop and dean of that diocese are to be consulted by the commissioners, and to sit and vote with them on the question. ss. 51—57.

The advowsons of benefices annexed to the headship of any college in Oxford or Cambridge, and to the Regius Professorship of Divinity at Cambridge, are to be sold for the benefit of the party heretofore entitled to the benefice. ss. 58—62.

Powers are given for improving poor benefices, with the consent of the patrons, by an-

nexing certain sinecure preferments to them, by dividing and consolidating benefices, by exchanging advowsons, apportioning the incomes of benefices belonging to the same patron, or other similar arrangements. ss. 64—67.

The act is not to affect dignitaries in possession on 13 August 1836, except the Rev. H. H. Milman. s. 68.

The valuation of the ecclesiastical revenues is to be amended from time to time under the direction of the commissioners, reprinted, and received as evidence of their value. s. 69.

The bill contains similar provisions to those in the former act, 6 & 7 W. 4, c. 67, for empowering the commissioners to prepare schemes for executing in detail the provisions of the act, which when approved by the Queen in council, are to be registered in every diocese and gazetted, and then to have the force of law; all such Orders in Council to be laid before Parliament. ss. 71—76.

The commissioners are to have the same powers for executing this act as for the former act, and the two are to be construed together. s. 77.

The usual formal clause for amending the act. s. 79.

NOTES ON THE NEW RULE AS TO ADMISSION NOTICES.

THE notices formerly required to be given were eight in number, namely:

1st notice.—To be served at the Masters' Office three days at the least before the first day of the Term next preceding that on which the party applying intends to be admitted.

This has been *continued* by the new rule. From these notices the printed list is compiled.

2d notice.—To be stuck up in the Queen's Bench Office.

This was evidently unnecessary and useless, for the notices were stuck up one upon another, and never referred to. This has been *abolished*.

3d, 4th, 5th, 6th, and 7th.—Notices were entered in the books kept at the Chambers of the five Judges.

Since the alteration at the Judges' Chambers *two* entries only were requisite, and accordingly the new rule provides that one shall be made in the book at the Lord Chief Justice's Chambers, and one at the Chambers or Hall of the other Judges.

The 8th notice, to be served at the Incor-

porated Law Society, was necessary to be continued, and has been ordered accordingly.

Instead of the above *eight* notices there are now only *four*, namely:

- One at the Lord Chief Justice's Chambers;
- One at the Chambers of the other Judges;
- One at the Masters' Office; and
- One at the Law Society.

NOTICES OF RE-ADMISSION.

It was necessary, until the last rule, to give five notices in the Judges' books, as upon an admission: one to be posted up at Westminster, and one in the Queen's Bench Office, besides the usual notice to the Solicitor of Stamps.

The new rule provides that three notices only shall be given: viz. one at the Lord Chief Justice's, one at the Judges' Hall, and one at the Masters' Office.

See the new rule, p. 22, *ante*.

THE STUDENT'S CORNER.

TENANCY BY ENTIRETIES.

WHEN an estate is made to husband and wife, either in fee or in tail, their interest is denominated a tenancy by *entireties*, and neither of them alone has power to alien to prejudice the other's right. (Preston on Estates, 131; Co. Litt., 187 b.) I should be glad to know, however, what interest they respectively take, when a term of years is granted to them, "their executors, administrators and assigns," and whether the husband can assign the term without his wife's consent, so as to bind her surviving? P—x.

DOWER ON EQUITY OF REDEMPTION.

The following point has arisen upon the 2d sec. of the Dower Act, 3 & 4 W. 4, c. 105:

A. takes a conveyance to uses to bar dower, and subsequently mortgages in fee—Does A.'s wife acquire any right of dower out of the equity of redemption, so that on a sale concurrently by the mortgagor and mortgagee, a purchaser can require her to join in his conveyance?

If, as it would seem, a mortgage in fee simple, does not create any new estate in the mortgagor,—his equity of redemption being regarded by the Courts as a continuation of the old ownership—it is submitted, that no right of dower would attach thereto. See further, Coote on Mortgages, p. 49. W. H.

ACTION ON COVENANT.

Can a covenantee bring an action of covenant under 1 W. 4, c. 47, against a devisee of

the covenantor, in those cases where the relation of debtor and creditor did not exist between the covenantor and covenantee?

That the action of debt under 3 & 4 W. & M. c. 14, was confined to those cases where such relation existed, appears from *Farley v. Briant*, 5 Nev. & Man. 42, 57; and from the observations of Mr. Justice *Patteson* in that case, and an attentive perusal of the act itself, I should have thought the same construction would be put on the new act. Sir Edward Sugden, however, in the last edition of his *Vendors and Purchasers*, 2 vol. p. 541, appears to be of opinion, that where a vendor dies seized of real estates, which are devised by his will, the devisee is liable to an action for breach of the covenants for title at the suit of the purchaser. No case is cited in support of this opinion.

A. C.

PRACTICE BY DISTRINGAS IN THE EXCHEQUER.

THE present practice in the Exchequer of issuing a *distringas* on stock in order to prevent its improper transfer, is well-known to be very beneficial, and the number of instances in which the power is brought into operation is very considerable. The writ may be obtained and lodged at the Bank within an hour, and its effect may continue for years and the parties never hear of it, unless they attempt to make the transfer which it is intended to prevent. The dividends are paid over as usual.

There is this advantage also, that the party lodging the *distringas* can remove it in a few hours, and at a small expense.

We suggested in our last Number that this practice should be transferred to the Court of Chancery on the abolition of the Exchequer, and are glad to find that the Bill, as re-printed in the House of Commons, contains a clause to this effect. As the Bill stood the object was to be effected in a summary way on motion or petition; but this would have occasioned delay both in obtaining the *distringas* and in discharging it.

SELECTIONS FROM CORRESPONDENCE.

CHARGE FOR SEARCHING FOR JUDGMENTS.

THE charging the additional fee of sixpence, mentioned by a correspondent at p. 202, *ante*, I submit, is entirely unjustifiable. Under the tenth division of the table of fees the following occurs: "On a general search for judgments where an index is kept 2s. 6d.;" and, under the fourteenth division, "all office copies, per folio,

sixpence; every other copy, transcript, or extract, per folio, sixpence." It is under this latter clause that the Clerk of the Judgments of the Queen's Bench attempts to justify the charge for extracts; but what can be clearer than that the Courts intended to relieve the profession and their clients from the old fee of fourpence per term, which, in many cases, amounted to a comparatively considerable sum, and to fix the fee at 2s. 6d., whether extracts were taken or not; and why should the fee be unfixed? Whether a short search or a long one be made, and whether extracts are taken or not, the trouble to the Clerk of the Judgments is the same.

The solicitor goes to the Judgment Office, stating that he wishes to make a search, whereupon the clerk refers him to the books on the shelves, which the solicitor lifts down, searches and replaces, taking, as he goes on, copies or extracts of the entries he finds against the name he is searching for. Having completed his search, he applies to the clerk again to pay the fee. On asking the reason of the charge for copies or extracts, he is told "that the Clerk of the Judgments is supposed to make the extracts himself, but, for your convenience, in order that you may not be obliged to wait while he is transacting other business, he permits you to make them." What authority there is for this position I am unaware, and I should like to inquire, if, under the old system of fourpence per term, the solicitor had applied to the Clerk of the Judgments, as his official duty, to make the extracts and relieve him (the solicitor) from that trouble, whether the Clerk of the Judgments would not have met the solicitor's application with an expression of surprise and a refusal? If so, how can the clerk now justifiably take it into his own hands and charge the suitor a fee for that duty which would be performed by the solicitor for nothing? It is but justice to say that the Queen's Bench Masters think the fee claimable, and that the clerk is personally disinterested in the matter, as the fees go to a general fund. However, the charge in all the Courts on this matter of every-day occurrence should be made uniform, but not the wrong way, as the money out of pocket on conveyancing bills is already sufficiently heavy without additional imposts.

T. B.

CHARGES FOR WILLS.

What is the usual charge for making wills? Are they charged for as conveyances, viz. so much for drawing and engrossing? I know a Solicitor who charges altogether two shillings a-folio, but I doubt whether this be general. I would thank some correspondent for information regarding the usage on this point.

A YOUNG PRACTITIONER.

STAMPING COPIES OF COURT ROLLS.

By the stamp act it is required that copies of court rolls are to be stamped within four months. It however, sometimes happens, that from pressure of business, illness or inadvert-

ence, the copies are not transcribed to be stamped within the prescribed time.

In such cases (and they have actually occurred) the commissioners refused to allow them to be stamped, without the payment of a penalty of 5l., although the steward could at any time purchase the stamps and have them re-copied, which he was obliged to submit to. Of a truth the public offices connected with the revenue in this country are the most unaccommodating in Europe. It would seem as if a conspiracy existed, to occasion needless trouble.

CIVIS A.

LAW OF INHERITANCE.

I beg leave to call attention to a circumstance which, I am sure, must have been overlooked by the legislature, in framing the 3 & 4 W. 4, c. 106. (The act for the amendment of the law of inheritance.) By sect. 9 of this act "any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir; and the place in which any such relation by the half blood, shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor, where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood, on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother." This at first sight appears to be very fair; but to shew that it is not so I will put a case by which it will be more readily seen. A man purchases an estate, and dies intestate, leaving only a half sister on the mother's side: upon first looking at this, all persons would say the sister was entitled to the property, but what is the fact? Instead of this person whom common justice points out to be his heir, taking the estate, his paternal pedigree must be ransacked, till some great grandfather's twentieth cousin is found, who is an utter stranger to the intestate, but who nevertheless takes his property. Had the half sister been on the father's side she would have taken without ascending higher, and surely a half sister is as nearly related to the intestate, whether she come on the father or mother's side, particularly as by this act the person last seized is to be considered as the purchaser, unless it can be proved that he took by descent. I therefore think, either the half blood of the mother should be admitted immediately after the half blood of the father, or that the maternal heirs should be admitted after the paternal ancestors had been traced to a certain fixed point, and that not very remote. The case above mentioned in fact happened, and considerable property passed—the lady died, and upon a sale under her will, the purchaser's solicitor discovered the error, and the estate went to a relation many degrees distant, and of whom the intestate never had any knowledge.

SUPERIOR COURTS.

Lord Chancellor's Court.

BANKRUPTCY PRACTICE.—ANTE-DATING ORDERS.

This Court will not alter the date of its order from the day on which the order was applied for and granted to a prior day.

Mr. Ellis applied to the Lord Chancellor for an alteration of the date of an order made by his Lordship on the first of June, to the 30th of May, both in the present year. From the affidavit, which he had in support of his application, it appeared that Mr. H—— had on the 30th of May, obtained from the Court of Review a reversal of an adjudication on a fiat in Bankruptcy issued against him, and on the same day he issued a writ in an action against his debtor, but the Lord Chancellor's signature to the order for rescinding the fiat was not obtained until Monday the first of June, and until then the bankrupt's estate, including a right of action, divested by the adjudication on the fiat, was not re-vested in him. It would answer the exigency of the case, if his lordship would alter the date of the order of *supersedeas* from the first of June to the 30th of May, so as to give effect to the writ issued for the action, that being also the day on which the fiat was actually superseded.

The Lord Chancellor said the Court of Review had no power to supersede a fiat, and their order on that point was a nullity. The power to rescind the fiat was reserved to the Lord Chancellor,* and the order to rescind not having been applied for till the first of June, he could not give any other date.

In re H——.—Sittings at Lincoln's Inn, July 15th, 1840.

Rolls Court.

PRACTICE.—TIME FOR ANSWERING.

Where accounts necessary to be gone into, for the purposes of a defendant's case are long and complicated, the Court will allow considerable time for putting in the answer to an amended bill, although the amendments may have been framed principally from documents and accounts produced by the defendant.

The bill in this case was filed by the plaintiff as the personal representative of Lord Grenard against the defendants, who had formerly acted as his agents in the receipt of various monies, and, amongst them, the fees of the clerk of the Hanaper Office and clerk of the Crown, to which the late Lord Grenard was entitled. The original bill was filed in July 1839, to which the defendant put in his answer, and referred to certain accounts and documents in support of his allegations in answer to the charges contained in the bill. The plaintiff having under an order obtained an inspection of these documents, amended his bill. The defendant appeared to the amended bill on the

1st of February 1840, and on the 7th of March applied for and obtained four months' time to answer it, at the expiration of which time the defendant not having put in his answer, the plaintiff issued an attachment. On the 7th of July the parties attended before the Master on a warrant for further time, the defendant alleging that he had not previously applied, because he considered the four months granted to have been calendar months, but the Master decided that the attachment being sealed, he had no jurisdiction. A motion was, therefore, now made to discharge, or suspend, the attachment, and that the defendant should be allowed till the end of next Michaelmas Term to put in his answer to the amended bill.

Kindersley and *Roupeil* for the defendants, stated, that the original bill consisted of only four skins of parchment, while the amended bill covered seventeen skins and contained six-hundred folios. The accounts were of a very complicated description, and the bill prayed for distinct and separate accounts from each of the defendants. The affidavits on the part of the defendants stated, that owing to these circumstances they had not yet been able even to complete the necessary instructions to counsel for preparing the answer; that they were desirous of giving a full and satisfactory answer to all the interrogations in the plaintiff's bill, and that if they were allowed to the end of next Michaelmas Term, it would be barely sufficient. They also expressly stated, that they were desirous of proceeding as speedily as possible and that the application was not made for delay.

Pemberton and *Clark*, for the plaintiff's, opposed the motion. They had no objection to allow till the 1st of October, upon the defendants consenting to the Serjeant at Arms going against them in the event of the answer not being put in within that time. [The Master of the Rolls said, such an order was never taken except by the unwary]. The plaintiff was an executor, representing large estates, and urged on by creditors and parties beneficially interested to bring the suit to a hearing; and when it was considered that the whole of the amendments to the plaintiff's bill were framed from the accounts and documents produced by the defendants, the plaintiff had a right to affirm that there was no pretence for the requisition now made.

The Master of the Rolls.—Where a case is to be made out from very complicated accounts, the answer must necessarily require more time in the preparation than that usually allowed. The question is, whether any further time should be allowed in this case, and if so, what that further time should be. The plaintiff on his original bill shaped his case very differently from what it now appears on the amended bill. He has introduced various new statements and charges, which the defendants are required to answer, and it is not a sufficient objection to this application to urge that the amendments were framed from accounts and documents furnished by the defendants; for

they may be used so differently to the mode originally adopted by the plaintiff as to require much time and labour in dissecting them. It appears, however, that when the application was made to the Master in March last the defendants stated, that the case was of such a complicated nature as to require a month for preparing the necessary instructions for the answer, and three months for preparing the answer. Four months' time was accordingly granted, but at the end of that time it appears that the instructions are not even prepared, and it is stated that three weeks more time will be necessary for preparing these, and that it is necessary for the defendants to be allowed till the end of next Michaelmas Term for preparing the answer. Now, it must be assumed that three weeks' further time will be sufficient for completing the instructions, which will be the 10th of August, and I cannot suppose that counsel will not be able in a few weeks after to prepare the answer. I will, therefore, allow till the 12th of September, the defendants paying the costs of the motion and of the attachment, and in the mean time the attachment to be suspended.

The plaintiff's counsel afterwards consented to extend the time to the 1st of October.

Oakley v. Lawley, July 20, 1840.

MARSHALLING ASSETS.—APPORTIONMENT OF COSTS.

In case of a deficiency of assets to pay creditors, the costs in a creditor's suit relating to the realization of assets must be classified, and borne by the particular fund to which they relate, e. g. those incurred in realizing legal assets, by the produce of those assets, and e converso.

A suit had been instituted by certain simple contract creditors of the testator, in the pleadings named, for the purpose of obtaining a distribution of his estate amongst themselves and his other creditors, and a decree having been made in 1836 directing the usual accounts, under which the Master had made his report, the cause now came on for further directions. It being found that the produce of the testator's estate, would not be nearly sufficient to satisfy his debts the principal question was, as to the mode in which the costs of the suit ought to be discharged.

Tinney and Blunt, for the simple contract creditors, contended, that inasmuch as the suit was for the general benefit, a general fund should be provided out of all the assets, and they referred to an order in *Sir Henry Seton's* work on Decrees, p. 95, where, under similar circumstances, the costs of all parties were ordered to be paid out of the testator's estate; and if the personal estate were not sufficient, then to be raised out of his real estate. The costs relating to the sale of real estates, might perhaps, be properly charged upon the produce of such particular estates, but no further distinction ought to be allowed.

Pemberton and Girdlestone, *contra*, argued that the precedent referred to was only applicable where the testator's estate was sufficient

to satisfy all claims upon it, but where there was a deficiency, then the costs must be apportioned, and the costs incurred in realizing equitable assets, must be borne by the equitable assets, and those incurred in realizing legal assets, by the legal assets. The form of this order would be found in page 137 of the work quoted.

The Muster of the Rolls.—The fund produced from the testator's estate consists of two distinct parts,—the one legal, the other equitable, and the legal being insufficient to pay the specialty debts, the question arises in the distribution of the testator's estate, as to the mode in which the costs shall be settled. Various costs have been incurred in realizing each description of assets, and it has been urged that all the costs should be borne, if necessary, out of the legal assets; but, it is admitted that, if any costs were incurred in realizing particular equitable assets, they should be paid out of the equitable assets. There is frequently a great mistake with regard to what are termed general costs, including costs in the cause, and of various proceedings before the Master, and without which the equitable assets would not be realized. In this case I am of opinion, that the costs ought to be apportioned, and if necessary that the directions contained in the order referred to in page 137 of *Sir Henry Seton's* work should be followed, that those relating to the equitable assets, should be paid out of the fund produced from such assets and those relating to legal assets out of the fund which the Master shall find to belong to the legal assets.

Roll applied on behalf of a specialty creditor, not a party to the cause, to whose solicitor a copy of the proposed minutes had been sent for approval, for costs of his appearance; but his Lordship said, that as the creditor came at no expence, and was not bound to appear, he could not be allowed costs.

Clark v. Weir, July 17th, 1840. M. R.

Queen's Bench.

[Before the Four Judges.]

RATING.—CHARITY.—OCCUPATION.

A school had been founded by voluntary subscription, and was chiefly supported in the same manner. The scholars, who were maintained and educated, were the children of parents in humble, but not in destitute circumstances; and a payment of 12l. a-year was required from each scholar: Held, that this constituted such a beneficial occupation in the trustees of the school, as to render them liable to be rated for the buildings.

This was an appeal against a rate levied on a Quaker's school at Croydon. The sessions had confirmed the rate subject to a case. The facts stated in the case were sufficiently noticed in the judgment. The case was argued in Easter Term by *Mr. Petersdorff*, in support of the rate, and by the *Attorney General* and *Mr. Montagu Chambers* in support of the appeal.

The Court took time to consider the ques-

tion, and in the Banc sittings after Trinity term judgment was delivered by

Lord Denman, C. J.—This was the case of a rate upon a Quaker's school-house in Croydon, and the question was, whether the house was not exempt from rating as a building employed for the purposes of public education, and for them alone. The two wings of the house were occupied entirely by the scholars. The question brought before us was in this form; "whether there was any beneficial occupation, and what was to be considered a beneficial occupation." The institution was in the main charitable. It first took its origin, and has since been maintained by donations and subscriptions. Trustees and a managing committee were appointed; the legal estate was vested in them, and the subscribers received no benefit from the institution; and the servants of the institution had no more accommodation in the building than was absolutely necessary to enable them to carry on the business of the institution. The premises were purchased by a society in 1823; at that time the premises, were rated, and have so continued till now. The liability to rate is now disputed. The scholars cultivate the ground, and that portion of it which is not covered by buildings, is devoted to the necessary sustenance of the scholars, and the persons belonging to the establishment. The scholars, who are maintained and educated, are admitted upon these terms. The expenses of each scholar are estimated at 20*l.* a year. No children are admitted whose parents are able to send them elsewhere, nor any whose parents cannot pay to the trustees the sum of 12*l.* a year. That sum is exclusively applied to the school. In deciding this case we are not called on to review the numerous decisions that have taken place on the general subject of rating, but we cannot advert to them without expressing our regret that the Courts should ever have departed from the simple test of occupation. The introduction of the question whether an occupation was or was not a benevolent occupation by individuals, or whether it was an occupation solely for charitable purposes, has occasioned great doubt and inconvenience in the application of the law relating to rateability. But though we may regret, we must be bound by the authorities that have established this distinction. It is not necessary for us to overrule any of the decisions in order to support the rate in the present case. We are of opinion that on the facts stated to us, there is rateable matter here. If these premises were let by the society, and every shilling received for the letting were carried to the purposes of the charity established by the society in another place, the tenant would be clearly liable to be rated. But even in the hands of the society there is a circumstance which brings this case within the rule of rateability, and distinguishes it from those cases of premises devoted to purely charitable purposes which have not been considered rateable. That circumstance is the payment by each of the scholars of a sum of 12*l.* a year. This is in

fact a revenue derived from the use of the building. It is enough if the revenue is produced by the building, to make the building subject to rate. With respect to occupation, there is no difficulty in determining that the trustees must be considered as occupiers. The nature of the establishment, and the parties employed by the trustees, are sufficient to constitute a beneficial occupation in those trustees; and these persons occupying by the permission and authority of the trustees, the latter must be treated as having the occupation of the premises. On these points this case resembles *The King v. St. Giles York*,^a and there is indeed, in our opinion, no substantial distinction between the two cases. On the whole, therefore, we are of opinion that the decision of the sessions was right, and that this appeal against that decision cannot be supported, and that the judgment appealed from must therefore be affirmed.

The Queen v. Sterry, T. T. 1840. Q. B. F. J.

WARRANT OF ATTORNEY.—*SCI. FACIAS*.

As between the original debtor and creditor a consent to dispense with the necessity of reviving an old judgment on a warrant of attorney is good, and execution may issue on such judgment without its being revived by scire facias.

Sir W. Fullett shewed cause against a rule to set aside a *testatum fieri facias* with costs, on the ground of irregularity. The facts of the case are these: There was a judgment on a warrant of attorney, signed on the 31st of October 1834. The warrant of attorney was given to secure the payment of a debt which was not disputed between the parties. Execution was not at that time issued on the judgment, but after some years had elapsed execution was issued and a levy made on the 1st of May, 1840. The objection taken to this execution is, that it is an execution issued on a judgment of more than one year old without any *scire facias* having been previously sued out. The first answer to this objection is, that the proceeding has taken place on the written consent of the defendant. He had given a written consent that execution should issue without a *scire facias* being required, and this consent was given in the presence of the attorneys for the plaintiff and the defendant. The consent is in these words: "I admit that there is due to the plaintiff on a warrant of attorney dated &c., the sum of 1144*l.* 12*s.* 5*d.* for principal and interest, and I consent to his issuing execution on such judgment notwithstanding there may have been no execution within a year and a day." The question now is whether this execution is not regular on that consent. There has been a fiat against the defendant, but there is no allegation that this application is made on the part of the assignees. *Morris v. Jones*^a shews that under circumstances like these a *sci. fa.* is not necessary.

^a 3 Barn. & Ad. 573.

^a 2 Barn. & Cres. 242.

Mr. Butt, in support of the rule.—The execution here has been issued without any authority required by the law to justify its issuing. In *Hiscocks v. Kemp*,^b the warrant of attorney itself contained a clause that it should not be necessary to revive the judgment thereby authorised to be signed, and on that ground an execution issued without a *sci. fa.* was held not to be irregular. The consent here has no such authority or effect as the clause had there. It was a consent given five years after the date of the warrant of attorney, and just before the bankruptcy. [Lord Denman, C. J. referred to *Heath v. Brindley*.^c] There the clause was contained in the warrant of attorney itself, and yet there the person giving the warrant of attorney having died, and a change of parties having taken place, it was held that there was no authority in the plaintiff to issue execution without first reviving the judgment by *sci. fa.* [Lord Denman, C. J.—Suppose the plaintiff had come to the defendant and said, I am going to sue out a *scire facias*; and the defendant had said, do not do so, for I will save you that trouble; would not that act of the defendant himself have been sufficient?] It would not. But here the case is stronger, for this alleged consent was in fraud of the defendant's creditors. It was given in, just before the bankruptcy, and on that account cannot be supported as an authority to dispense with a rule of law.

Lord Denman, C. J.—Considering that this is only a proceeding between a debtor and creditor, I see no reason why, by an arrangement between these parties, expense may not be prevented. In *Heath v. Brindley*, it was necessary to protect the interests of third parties, who might otherwise have had no means of protecting themselves against a false demand.

Mr. Justice Littledale.—I am of the same opinion. The *scire facias* is a mere matter of form, and may be dispensed with as between the original parties themselves.

Mr. Justice Patteson.—This is not an irregularity as between a creditor and his debtor. If there has been a fraud on the part of the debtor, such as procuring himself to be taken in execution, that would be an act of bankruptcy. But none is shewn.

Mr. Justice Williams concurred.

Rule discharged.—*Morris v. King*, T. T. 1840. Q. B. F. J.

Exchequer of Pleas.

SUMMONS.—JUDGE AT CHAMBERS.—ORDER ABSOLUTE AND NISI.

If an order is made nisi by a Judge, and no step is taken by the opposite party to discharge it, it will become absolute as a matter of course.

Barstow shewed cause against a rule nisi obtained by *Theobald*, for setting aside an interlocutory judgment, signed by the plaintiff. It was an action for goods sold and delivered: the particulars of the plaintiff's demand were

indorsed on the declaration. Subsequently a summons for better particulars was taken out and served on the plaintiff's attorney. By his consent, an order was drawn up on the 19th February, to the following effect:—"Upon hearing the attorneys or agents on both sides and by consent, I do order that, unless cause be shewn to the contrary, at my chambers, on Monday next, at eleven o'clock in the forenoon, the plaintiff's attorney or agent shall deliver to the defendant's attorney or agent, a further and better account in writing, with dates and items of the particulars of the plaintiff's demand, for which this action is brought, and that in the mean time all further proceedings in this cause be stayed." On the Monday after the summons had been duly served, the plaintiff's attorney attended the Judge's chambers, and after hearing the defendant's attorney called several times, he went away. On the 11th March, the plaintiff's attorney signed interlocutory judgment, and subsequently gave notice of instituting a writ of inquiry. *Barstow* contended, that as it did not appear that any thing had been done by the defendant to make the above order nisi absolute, it did not operate as a stay of proceedings, and therefore the plaintiff was at liberty to sign judgment.

Theobald supported the rule; and contended, that as the plaintiff had not taken any step to discharge the order, it became absolute as a matter of course.

Purke, B., observed, that if an order nisi was made by a Judge at chambers, it would become absolute as a matter of course, unless the party opposing it took some step to discharge it. When the attorney in the present case, who was to shew cause against the order, found that the opposite party did not attend, it was his duty to go before the Judge, state the facts, and apply to have the order discharged. If such a course was not adopted, the order, as a matter of course, became absolute. The present rule must therefore be made absolute for setting aside the judgment.

Rule absolute.—*Humphreys v. Jones*, E. T. 1840. Excheq.

SEVERAL COUNTS.—CHARTER PARTY.—CARRIER.—DISTINCT CONTRACTS.

A count on a charter party and a count on an implied contract to take proper care of goods in loading, may be allowed in the same declaration.

Henderson shewed cause against a rule obtained by *Crompton*, for striking out one of the counts in this case on the authority of *Weston v. Woodcock*.^a The first count of the declaration was on a charter-party, dated 15th May, 1838, made between the plaintiff and defendants, who were the owners of a ship called the Kent, then lying at Liverpool, whereby it was agreed that the said ship should, on or before the 31st May, 1838, sail and proceed to Belize, in the Bay of Honduras, and there, or at the usual places of loading in the bay, take

^b 3 Ad. & Ell. 676; 1 Har & Wol. 334.

^c 2 Ad. & Ell. 365.

^a 7 Dowl. P. C. 334.

on board a full cargo of mahogany &c., which the plaintiff thereby engaged to ship, not exceeding what she could reasonably stow and carry, over and above her tackle, apparel &c., and being so loaded, should therewith proceed to London or Liverpool, and deliver the same on being paid freight, at 4*l.* per ton, &c. It then, after alleging mutual promises, averred that the ship sailed according to the agreement, and on the 1st October arriving at the usual place of loading in the Bay of Honduras, viz. Ulloa; and that the plaintiff there shipped a full cargo, not exceeding &c., to wit, five hundred tons of mahogany; in this, to wit, that he did then and there, in the usual and accustomed way there, and so as that the same might be thereupon received and taken on board the said ship for the said voyage to England, deliver the said mahogany to the master and crew of the said ship, who received the same from the plaintiff for the purpose of being, and so as that the same might be taken on board of and carried and conveyed in the said ship on the said voyage to England. Breach, that although part of the cargo was taken on board, and carried and conveyed on the said voyage to England, and although the said ship proceeded therewith to Liverpool, according to orders theretofore received in that behalf; and there delivered the said part of the cargo, and, although the plaintiff performed all the conditions of the said agreement on his part, and paid all the residue of the freight, yet the whole of the cargo so delivered and received as aforesaid, was not taken on board, and carried, and conveyed, and delivered in and from the said ship; but, on the contrary thereof, part of the cargo so delivered and received, as aforesaid, to wit, one hundred tons of mahogany &c., was not, nor were, nor was any part of the same parcel of such cargo, taken on board, or carried, conveyed and delivered, according to the true intent and meaning of the said agreement, but therein the defendants wholly failed and made default, and thereby the said part of the said cargo became and was wholly lost to the plaintiff. The second count stated, that in consideration that the plaintiff, at the request of the defendants, had caused certain goods, to wit, one hundred tons of mahogany of great value, to wit, &c., to be taken to and loaded on board of a certain vessel called the Kent, then lying in the Bay of Honduras, for the purpose of being carried and conveyed to England, for reasonable freight and reward to the defendants, they the defendants promised the plaintiff that due and proper care should be taken of the said goods, until the same should be loaded on board the said ship. It then averred that the plaintiff did deliver the said goods to the defendants for the purposes aforesaid. Breach, that due and proper care was not taken of the said goods until the same were loaded on board the said ship, but on the contrary thereof, so little care was taken of the same, that by and through the negligence, carelessness, and improper conduct of the defendants in the premises, the said goods,

after they were delivered to the defendants as aforesaid, and while in their custody to be loaded on board the said vessel as aforesaid, and before the commencement of this suit, to wit, on &c., became and were wholly lost.

Henderson now contended, that on considering the allegations on the two counts, they must be considered as disclosing two causes of action; and therefore allowable, according to the provisions of the new rules.

Per Curiam.—The cause of action disclosed in the first count is on the charter-party; the other is on a contract, to which it may be found that that instrument does not apply. The two counts may therefore be allowed.

Rule discharged.—*Vaughan v. Glenn and others*, E. T. 1840. Excheq.

REFERENCE.—ARBITRATION.—PUBLICATION OF AWARD.—NOTICE.

An award is not published unless such notice is given of its having been made as will enable the parties to become acquainted with its contents.

Notice of an award being ready for delivery at a certain hour on a certain day, the notice being on a day previous to that day, and the parties' attorneys attending at the hour and on the day appointed, but one of the parties dying at an earlier hour in the same day, on which the award was so published; Held, that the award had not been published in the life-time of the party deceased.

When an award is made pursuant to a judge's order, an application to set it aside must be made within the time limited by the 9 & 10 Wm. 3.

W. H. Watson and Fortescue shewed cause against a rule nisi obtained by *Hoggins* for setting aside the award made in this case. It was an action of trespass, and notice was given by the party making the award to the attorneys for the parties that the award would be ready for delivery at five o'clock in the afternoon of the 12th of July. They accordingly attended and took up the award. The plaintiff died at ten o'clock on the same day. In Hilary Term the present rule was obtained on the ground that no publication of the award had taken place during the life-time of the plaintiff.

It was now contended, that a sufficient publication had taken place during the life-time of the plaintiff, in consequence of the notice having been given and the award having been made previous to the death of the plaintiff. But an objection to the application might be made which was, that it was too late. The award had been made pursuant to a judge's order, but by analogy to the 9 & 10 W. 3, c. 15, s. 2, the Courts have been in the habit of holding that applications must be made to set aside such awards within the time limited by the statute. Here the award had been published in the month of July, and the motion to set it aside was not made until Hilary Term, —the whole of Michaelmas Term, which was the term next after the publication, was allowed to pass. The application was consequently too late, and the present rule must be discharged.

Hoggins in support of the rule, contended that no publication of the award could be considered as having taken place until five o'clock on the 12th of July. Until then the parties had not an opportunity of seeing the award, and until then the arbitrator would have a right to make any alterations he thought proper in his award. With respect to the other answer which was given to the present application, it was to be observed, that the order in question was not one made under the statute.

Parke, B.—The decisions upon the question as to what is a sufficient publication, are to a certain extent conflicting. It appears to me that the true principle on which this question is to be decided, is that which is laid down by *Tindal, C. J.*, in *Musellbrook v. Dunkin*.^a The principle there laid down was, that an award was not published until notice had been given to the parties that it was within their reach on payment of just and reasonable expenses. That was not the case in the present instance, until five o'clock on the 12th July. The plaintiff at that time was dead. A publication, therefore, did not take place during the life-time of both the parties. With regard to the other objection, that the application is too late, I think that by analogy to the 9 & 10 W. 3. c. 15, s. 2, the present rule was not obtained in due time. I think, therefore, the present rule ought to be discharged.

Alderson, B., and *Gurney, B.*, concurred.

Rule discharged with costs.—*Brooke v. Mitchell, E. T.* 1840. Exch.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

23d July, 1840

Masters in Chancery
Inclosure Acts Amendment.
Police Rate's Assessment.
Borough Watch Rates.

House of Lords.

Ecclesiastical Duties and Revenues.
[For second reading.]
Law of Principal and Factor Amendment.
[For second reading.]
For improving Grammar Schools.
[In Committee.]

House of Commons.

Small Debt Courts for
Liverpool,
Marylebone,
Wakefield Manor.
Metropolitan Police Courts.
[For third reading.]
To extend the Term of Copyright in Designs
of Woven Fabrics. Mr. E. Tennant.
[In Committee.]
To extend Freeman and Burgesses' Right of
Election. Mr. F. Kelly.
To amend the County Constabulary Act.
[Passed.] Mr. F. Maule.

^a 9 Bing. 605.

To consolidate and amend the Law of Sewers.

[In Committee.]

To abolish capital punishment in all cases except Murder.

[For third reading.]

Mr. Kelly.

To amend 7 W. 4, & 1 Vict. for regulating attorneys and solicitors in Ireland.

[For second reading.]

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

To exempt stock-in-trade and other personal property from being liable to be rated to the relief of the poor. The Attorney General.

[In Committee.]

Affirmations.

[For third reading.]

Marriages Act Amendment.

[For third reading.]

Registration of Voters. [For second reading.]

Right of Voting. [For second reading.]

Insane Prisoners. [For second reading.]

Parochial Assessments. [In Committee.]

Prevention of Bribery. [For second reading.]

Notice of Elections. [In Committee.]

Turnpike Acts Continuance. [In Committee.]

Administration of Justice in Equity.

[For second reading.]

THE EDITOR'S LETTER BOX.

"A Barrister," adverting to the decision of the Judges against the validity of his late Majesty's warrant, throwing open the Common Pleas, contends that if the warrant was bad as to the depriving part, it was bad also as to the conferring part, and that the Serjeants cannot retain the precedence granted by the warrant. But our correspondent is mistaken in supposing that his Majesty had no power to grant precedence.

A Correspondent on the subject of the propriety of prizes being awarded to those who acquit themselves best at the examination, suggests that it would be better if there were two classes, composed of a few of the best; namely, five in the first, and ten in the second class, which he thinks would be a greater stimulus than prizes.

The communication regarding writs of *Justices* shall be attended to.

"Heliogabalus" should have some consideration for the different tastes of our readers.

X. Y. Z. states, that having gone to the Court of Review for the purpose of taking the oaths in order to be admitted to practise as a solicitor in the Court of Bankruptcy, in consequence of the information given by us on this point on the 4th instant, he found that no oath is taken in the Court of Review, but an affidavit that the applicant has been admitted in one of the Courts of Common Law, sworn before a commissioner, is all that is necessary to entitle the party to sign the roll, and get his admission from the Registrar's Office of the Court. Our correspondent, we presume, is a Country Solicitor.

The suggestion of M. G. S. shall be mentioned.

The Legal Observer.

MONTHLY RECORD FOR JULY, 1840.

—“Quod magis ad nos
Pertinet, et necire malum est, agitamus.”

HORAT.

EVIDENCE BEFORE THE SELECT COMMITTEE OF THE LORDS ON THE CHANCERY BILL.

THIS evidence is very ably stated, and highly deserving of the consideration of the profession. We have made a few extracts to lay before our readers, and have classed them under heads. The most important and novel parts of the evidence are those pointing out the extent to which compromises are forced on the suitors in Court, and that relating to the mode of calculating judicial power.

COMPROMISES, TO WHAT EXTENT, &c.

‘I consider that of the suits now brought into the Court one half only are disposed of by the Court that would be so disposed of if there were sufficient force in the Court to hear every matter as soon as it is ready for hearing. From my own observation I should say that half of the causes are terminated either by compromise, or by the death or the insolvency or bankruptcy of the parties; and I see nothing in the returns to contradict that opinion. I put out of my calculation short causes, and causes heard by consent, and those which are disposed of by motions immediately on their being filed.—*Sharpe*.

I believe it will turn out that there are not more than from eighty to ninety adverse original causes heard per annum by each judge. I find, first, that one judge’s work, as nearly as possible, is struck off the registrar’s book between setting-down and hearing. I find that of each year’s influx of causes nearly 1,066 adverse causes are compromised before setting-down. I find that 122 adverse causes are compromised after setting-down and before hearing; and 122 adverse causes, I think I can show very clearly, is just about the quantity of adverse business that each of the two judges

gets through at present. I can give the names of the 122 causes so compromised, and show the entries in the registrar’s book, so that I can prove that this argument as to compromised business is not a mere speculation. The results attained by this inspection of the registrar’s books agree with those obtained by other modes which may be used for testing them.—*Field*.

Estimate of the extent of compromise, which can be evidenced by the returns of the court.

If the above view be correct, then, as all short causes come to a hearing, of every

2200 bills filed,

300 revivors,

1900 original causes;

Of which 534 are heard short, and
— some of these even are heard so by compromise;

Leaving 1366 which are certainly adverse.

There are of these
set down only 300

Leaving 1st head
of compromise 1066 adverse original causes which have disappeared between filing and setting down. (Probably 200 to 300 of these have really however been settled by court on demurrer, plea, or motion,)

Of the set down 300
178 only are heard.

122 have disappeared, having
— been settled by compromise.

Of 178 heard first time many compromise afterwards.—*Field*.

R

You used an expression of "forced into compromise;" what do you mean by that?—That the suitors have the option of compromising their suits or remaining suitors in the court at a great expense, and for an indefinite time; and they choose the least of two evils.—*Wigram.*

Would not many causes which are now in arrear go off of themselves if they were near hearing?—I should think that increased expedition in hearing causes would tend to diminish the number of compromises. I think many are compromised because the parties are unwilling to wait the time which they must wait for hearing, and prefer sacrificing some portion of their rights.—*Kindersley.*

Would not many causes be compromised even if there were no delay?—No doubt; but the character of the compromise would be vastly improved; and that leads me to one of the faults I have to find with the court. If I have a good case, and come to a compromise, the delay is all in favour of my opponent, who has the bad case; he gets the value of the delay. The compromise is a good compromise, and brings me justice, if I make it the day before the cause is heard; if I make it ten years before the cause is heard, it is a very poor one.—*Field.*

INCREASE OF BUSINESS PREVENTED.

Finding that the number of bills do not increase, notwithstanding the greater demand for courts of justice,—a fact which is sufficiently evidenced by the number of persons who do not come into court on account of its delays,—I infer that the two or three years which elapse before a party gets his cause set down, and the two or three years which afterwards elapse before he can get it disposed of, is an operative cause, preventing an increase of bills. I do not care how many judges there are or how few. If I find the same complaints on the part of the public, and the same delays existing, I infer from these premises the want of more judges.—*Wigram.*

The cost of delay in money, however, is nothing to the evil of delaying the suitor's relief; at present the reputation of the court for delay is such, that constantly in the very strongest cases, and even with rich men, nothing will induce them, though they have the clearest case in the world, to file bills, and to undergo the years of anxiety of mind they must then have to endure. Only yesterday I had with me a rich merchant, who has a claim to no less than 10,000*l.*, and that upon a party well able to pay, but he tells me, "Compromise on any terms; I will not go to Chancery: you may take 1000*l.* if you can get it, if not, drop the claim. I will not leave a Chancery suit to my children."

The result of your experience is, that practically rights and interests of parties are compromised and abandoned, rather than they will come into the Court of Chancery?—To an enormous extent.—*Field.*

The two additional judges will not, in your opinion, be sufficient to keep down the growing arrear, independently of the strength necessary to work off the existing arrear?—When I see that there are 1,366 adverse causes come into court every year, and that there are not above 150 that the court really does now dispose of out of that number, I cannot help feeling that there will be a great deal of business that must come into the court when we shall have an opportunity of taking it there, and having it disposed of immediately. Besides the addition to the judge's work from getting rid of their present judge-arrears, every improvement in the offices will also create more judge-work out of the present body of causes, in preventing compromises which take place among such causes as are suffering from delay in those offices.—*Field.*

COST OF DELAY.

You have stated that those delays in the Court of Chancery you consider as a very great grievance to the suitors?—Very great.

And as a great disadvantage to the public? It amounts to a denial of justice.—*Kee.*

As a solicitor, and therefore one of a body more particularly entrusted with the client's purse, perhaps before going into the subject of the Equity Exchequer, your Lordships will allow me to state some facts showing the enormous money tax the delay in Chancery imposes annually on the suitors. It seems to me, as to the mere salary of a judge, comparing it with what the arrear costs the public at present, that the figures are such as must quite startle your Lordships, even taking them at a low computation. I find that there are now at least 525 causes in the Vice Chancellor's Court alone waiting to be heard. I have carefully counted every cause in which I was engaged last year, and I find that there are seven parties in every two causes. On this basis the term fees are 7,961*l.* a-year. The total annual loss from all sources amounts altogether, in this branch of the court, very nearly to 20,000*l.* a year, which sum the suitors in this single branch of the court are now paying annually because they cannot get their causes heard; and for this 20,000*l.* a-year they get nothing in return except the annoyance and injury of waiting so many years. They are taxed with the delay and the 20,000*l.* a-year too; and from the loss of interest it is a loss to their solicitors besides.—*Field.*

That cause was more than two years and a half in the cause book for hearing. There were only three solicitors in that cause; there was no abatement, nor any supplemental bill, and the term fees alone in that cause amounted to 39*l.* Now supposing there are 400 causes in the same situation, then 39*l.* multiplied by 400 would be upwards of 15,000*l.*, which is a total loss to the suitors, and is occasioned entirely by the causes not being heard when they are ready to be heard.

It would be better for them to club together and pay another Vice Chancellor?—It would

be a great deal better, instead of the suitors paying the term fees, to pay them to a fund for the salary of an additional judge; it would be far less expensive to the suitors.—*Koe*.

Another of the causes I mentioned above was the cause of *Jackson v. Pickering*, which was heard before the Lord Chancellor. I believe it was one of the last original causes the Lord Chancellor heard. The bill in that case was filed in the year 1834; evidence was gone into; and the cause was not ready for hearing till February, 1837, when it was set down. It did not come into the paper till the 5th June, 1840, when it was heard, and a decree made; it would not have come into the paper then, but for the circumstance of the Lord Chancellor taking original causes. In 1838, during the interval between the setting down, one of the parties died, which rendered a bill of revivor and supplement necessary; and again, in 1839, another party became bankrupt, which occasioned a further supplemental bill. The decree which has been made merely directs inquiries as to parties. When the master has made his report, the cause will have to be heard again for further directions, when, from the nature of the cause, accounts only can be directed; so that it will have to be heard a third time before a final decree can be made. There are a great many parties, and it is therefore certain that if it has to wait two years again each time between the setting down and the hearing, several more bills of revivor and supplement will be necessary.—*Sharpe*.

So that in the three years the expence for term fees is 25,800*l.*, for which the suitor gets nothing?—Yes. The annual expence which might be saved is 8,600*l.* This does not, as far as I understand, pay the solicitor any thing like the interest of the money that he is out of pocket during that time. This, however, as I observed before, is a small portion only of the expence occasioned by the delay; the expenses occasioned by bills of revivor and supplement are much greater.—*Sharpe*.

With reference to the cost on abatements, I may state that I have had a case part heard before the Rolls Court this very day, and I thought it might be useful to mention it, as it may not be known the dreadful tax the suitors are paying in the way of supplemental bills and bills of revivor. I have taken the most recent case I have as an instance, in order that it should not be supposed I am selecting an uncommon case for my example: *Crallan v. Oulton* is the name of the cause. The bill was filed in 1835. It is only a creditor's suit for payment of a note of 1,000*l.* It was set down in November, 1836. Then in June 1837, when it was about 140 causes from the paper of the day, one of the defendants became a bankrupt. Out of this arose the first supplemental bill. In September 1837, another man became a bankrupt; there was a second supplemental bill. There were some mortgagees turned up; they had to be made parties. Those proceedings were rather heavy. In March 1838, the cause was in the paper

of the day, but another man died at that time. We were then obliged to apply for an adjournment to have another supplemental bill and answer in May 1839; and on this 26th June 1840, the bill having been filed in October 1835, we have been part heard. I have reckoned what the cost of these supplemental bills has been, and I find the first was at least 100*l.*, the second 300*l.*, and the third at least another 100*l.*; that would make 500*l.*, for mere revivors and supplemental bills, with nothing of merits in them,—*just so much form*. Besides that, the parties have by this delay been put to other additional extra expenses, amounting at least to 50*l.* If the plaintiff had had his cause heard within six months after it was set down, he and the other parties would never have had these costs to pay. This cause is nothing unusual; I can take half the causes in my cause book, and show something more or less of the same sort. As to the great cost on the arrears of motions, I have brought with me a motion paper, just as a specimen? one heard the other day: it was a common motion for production of documents and payment in of money admitted on the answer, and there was one little circumstance only that made it necessary for the defendant to appear on it at all? it did not take two minutes when it came on. The expenses of solicitors attending court on that little motion have been 40*l.*—*Field*.

HOW TO CALCULATE JUDICIAL POWER, AND NECESSITY OF A SUFFICIENCY.

In considering what number of causes a judge can dispose of, the ultimate decision of the question in dispute between the parties must be looked to; therefore every motion and petition in the cause, as well as the hearing of the cause, whether on the original hearing or on further directions, must be considered to form part of one cause, and we must then calculate how many causes a judge can dispose of in a year, hearing all the matters relating to each cause. Supposing, therefore, a judge to hear, not only the cause, but also all those matters arising out of it, whether before or after the hearing, I think he would not be able to hear more than half the number (350) I have before mentioned.—*Sharpe*.

I wish to make the following statement in addition to what I said respecting the delays of the Court of Chancery, on the first day of my attending your lordships. I then said that the true measure of the rate at which a single judge despatches the business of his court, is the number of original causes which, one year with another, he can take in hand consistently with his carrying on the causes which he has in hand at the time. In order fully to explain the latter term of the proposition, I wish to add, that I consider every suitor whose cause is set down for further directions is entitled to have his cause heard *instantly*, in preference to all causes waiting for an original hearing. He ought to be subject to no delay but that

which arises from competition with other suitors on further directions. In other words, the court should give to original causes so much of its time only as may remain after disposing of the causes already in hand; it should take no new work in hand whilst the old work is unfinished, and in a state to demand its attention. If this course of practice were introduced, as I think it ought to be, and regular days were given to short causes, motions, and petitions (as heretofore), an exact measure of one judge's power, and the precise point at which the delays of a court (from being overcharged with work) commence, would both be as accurately ascertained as the nature of the subject will permit. The existing arrear, however, must be cleared off before the experiment can be fairly made; for the motions and petitions arising out of the arrear occupy much of the time of the court.—*Wigram*.

Therefore you do not consider the paper you have given in an estimate of the number of causes which the judges might dispose of, taking into account that there is an arrear?—No; for the arrear itself engenders work to him, and clogs him; and no judge under pressure can do the same as he could do not under pressure. We have at present all sorts of schemes to get the opinion of the court upon motions, and these increase the quantity of court-work arising out of each one cause, and prevent the judge from giving the time he otherwise would to the arrear.

You say you doubt much whether one judge would, in any reasonable time, get rid of the arrear of 800 causes; suppose he had nothing else to do, do you think two could get rid of that arrear, if they had nothing else to do?—Yes, certainly; if they had no new business coming to them, I have not the slightest doubt they would.

In what time?—That is a very difficult question; it depends upon the nature of the arrear, whether the causes which there are, are more adverse than the usual run of adverse causes, and on what is the degree of delay and consequent compromise to which you will consider it reasonable to subject that body of causes while they are being worked off. I do not think that a judge, doing all the business that is connected with a cause, and allowing new bills to come in upon him, could keep under more than 150 adverse causes per annum.—*Field*.

Are there not very learned opinions of very practical men in the Court of Chancery in favour of six Vice Chancellors?—Not very practical men, I should think.

Men who have been in practice?—Men who have been in practice.

And who have been in a good deal of practice, and who are now in high office?—I never heard that stated seriously. I have heard it said that the state of the Court of Chancery is a crying grievance, and that it is the duty of the legislature to appoint judges to get rid of that grievance. I have heard it said, speculatively, that it would be better that half-a-dozen judges should be appointed rather than that

stain should remain upon the legislature,—rather than the suitors should be put to the enormous expense to which they are now exposed.—*Koe*.

ARREAR WILL ALWAYS BECOME A STATIONARY QUANTITY.

With respect to the arrear being stationary, I consider that when once it is ascertained and known what business the court can do, the arrear will be stationary, or about stationary. When it is known that a cause cannot be heard until three years after it is ready for hearing, that fact will fix a limit to the number of causes that are brought into the court, and two judges may be able to keep the arrear stationary. I have no doubt that if the constitution of the court was such that a cause could not be heard till after it had been ready for hearing six years, that one judge might be able to do the business that came before the court; and if the time of waiting was lengthened to ten years, by a ten years' arrear, one judge would very possibly be able to keep that arrear stationary, by hearing causes a few hours in the week. When the number of years that a cause will have to wait for hearing is once ascertained, that delay necessarily excludes a large portion of business, and fixes the number of causes which will be brought into the court; and the arrear will then remain stationary, or about stationary.

Parties will not bring their causes into court, or carry them on to be heard, with the expectation of having them postponed for three, four, or five years?—No. Every year of delay therefore diminishes the number of causes; so that whatever the force of the court may be, when that force is once ascertained, the arrear will remain fixed, or nearly so.—*Sharpe*.

SOLICITOR'S INTEREST IN SPEEDY PROCEDURE.

But would they not have their bills paid much sooner in Exchequer?—Yes; and that would be a great advantage to the solicitor, and, I should have thought, would have counterbalanced any disadvantage he was under from having to pay larger sums; because a solicitor in a suit in the Court of Chancery, if he is delayed a considerable time, would not obtain much more than his money out of pocket, with five per cent. interest on it. I made that inquiry in the case of *Jackson v. Pickering*, and I found, from the length of time the cause was kept in court, the solicitor would not get more than repayment of his money, with five per cent. interest. I infer, therefore, that in the Court of Exchequer, where he gets back his money almost immediately, there must be some strong motive which prevents his going into that court.—*Sharpe*.

Is it not the practice in the Court of Chancery not to pay the solicitor's bill till the cause

has come on for further directions?—It is very commonly the case.

Is not it the usual practice?—I believe it is.

Do not the suitors pay money on account?—Sometimes; if the solicitors can extract it from the suitors, then they get money on account.

You are speaking of money had out of court by order of the court?—Money out of court.

Your former answer as to money not being paid to the solicitor till the cause came on for further directions bore no reference to what passes between the solicitor and his client as to obtaining money upon account?—No.

You mean, that if he looks for his costs to the adverse party, the usual course is not to make payment of money out of court till further directions?—No.

Is not the delay that takes place in the Court of Chancery very injurious to the solicitor from his being kept so long out of payment?—It has been repeatedly stated to me by solicitors, that in consequence of the advance they have to make for bringing a cause to hearing, and the incidental expenses, the interest upon that money amounts to more than what they receive in respect of the costs of the suit, and that they are out of pocket; it eats up their profit.—*Koe*.

And in these matters it must never be forgotten that the convenience of the solicitor is the convenience of the client; every obstacle thrown in the solicitor's way is so much injury done to the client; he suffers for it in expense and delay.—*Field*.

EQUITY EXCHEQUER.

This Court is now so entirely doomed, that it seems a waste of time to extract evidence relating to it. It will be right, however, to point out how entirely the evidence has borne out our statements in previous articles. That the solicitor's profit is higher is quite clear. Mr. Weatherall's statement that this is counterbalanced by having to pay higher fees is plainly inaccurate. The principal fees are paid to the Clerk in Court, who here gives a long credit.

We extract only—

Present inducements to use this Court.

And there are some reasons why both the solicitor and the counsel who are in practice in the Court of Chancery should prefer the Court of Chancery rather than the Court of Exchequer?—Yes; and those must be powerful reasons, because the profit, I understand, is greater to the solicitor in the Court of Exchequer than in the Court of Chancery; the fees are higher, and the folios are smaller.

By what per cent?—The late Mr. Agar used to say that it was ten per cent.—*Sharpe*.

Owing to there being no arrear in the Exchequer, the solicitor gets his costs sooner?—He does.

Upon the whole is it more beneficial to the solicitor to have a cause in the Exchequer than in the Court of Chancery in point of costs?—I think it is.—*Bowyer*.

That the Court has been long falling off, and is now in bad odour, and that it has principally fallen off from want of appeal.

Are you able to state what has been the rate of diminution of business in the Court of Exchequer?—Yes. In the five years from 1808 to 1812, inclusive, there were, upon an average, 540 bills filed in each year; from 1813 to 1817, 396; an act passed in that year, 1817, to enable the Chief Baron to sit alone in equity, and from that time there has been a gradual diminution, exclusive of the year 1833, when a great many bills were filed to prevent the operation of Lord Tenterden's Act.—*Bowyer*.

Is it your opinion that any change of the system of the Court of Exchequer would make it an effectual Court for equity business?—I should think not a sufficiently effective court: it is in very bad odour now: the public are not disposed to go into it; and there is a convincing proof in the fact that, notwithstanding all the arrears of the Court of Chancery, there are very few bills filed in the Court of Exchequer.—*Simpkinson*.

You file all your bills in the Exchequer?—Yes, with the exceptions I have mentioned.

You say you are the only solicitor who has done that?—I am.

When you file a bill in the Exchequer you generally find your antagonist solicitor not very well pleased with having to fight the battle there?—No; he complains that he does not know the practice, and observes to me, "This is a court I wish you would not come into."

Do not you find it very convenient to have your business in one court?—It must certainly be more convenient than business being scattered.—*Weatherall*.

Public opinion is decidedly against the Court of Exchequer, as compared with the Court of Chancery. That appears to me to be conclusively evidenced by several remarkable facts about which there can be no dispute: beginning with the time of Chief Baron Eyre, and proceeding downwards to the present hour, the Court of Exchequer has had presiding in it some of the ablest lawyers in Westminster Hall; during the whole of this same period the delays in Chancery have been the same as they now are, and have been the subject of the same complaints. In spite, however, of having judges whom nobody complained of, and in spite of all the difficulties and delays of the Court of Chancery, we find that suitors have not gone, and do not go, to the Court of Exchequer. From these premises, without investigating the cause, it is manifest that some objection does exist to the Court of Exchequer as a Court of Equity, and that suitors will not resort to it unless you pass an act to compel them to go there.—*Wigram*.

Moreover, we never feel comfortable in

going into a court where there is no appeal. That court, and the Court of Review, which also has no efficient appeal, give me more uncomfortableness and sense of apprehension of some uncertain impending evil, when I have to go into them, than any other court I have to do with. I go into other courts with an easy mind; not so into them.—*Field*.

I did not advise a compromise, I advised a suit in Chancery; he would not sue at all; but if he had decided to file a bill, I should have been sorry to have had to take it into the Exchequer. There is another reason, beyond those before given, which must govern every professional man. Not to say that there is abundant ground for the feeling, whatever the profession happens to feel and think about a court, must more or less govern all the individual members of the profession. It does not do for one member to set up for himself as being able to work a cause through a court which, by the common voice of the practitioners, has been condemned; if he does, all the after evils, if any, will be at his door, and justly.—*Field*.

That an entire Court staff would be wanted to amend it, and an appeal to the Lord Chancellor.

Is it your opinion that the Court of Exchequer would make an effective Court of Equity without an additional baron devoted exclusively to that department?—I should say certainly not; that is my decided opinion. There should be one judge who should take the whole of the equity business, if the court is to be retained as an effective court.—*Baron Alderson*.

Have you felt any inconvenience in the Court of Exchequer from the want of a registrar?—Yes; the Accountant General and the Master perform the duty of registrar with us. It would be a convenience to the court if we had a registrar.—*Baron Alderson*.

Supposing there was a permanent baron sitting, an equity judge, to whom would you say the appeal from his decision should be?—The appeal would be to the chief baron.

You would have a judge brought up as an equity lawyer, duly conversant with decided cases in equity; and you would have an appeal from him to a chief baron, who might be a common law judge, and not conversant with equity?—I should think it would be better to have an appeal to an equity judge.

What equity judge?—The Lord Chancellor.

From the baron who was sitting permanently in the court?—Yes, as an intermediate appeal.

Were you in the Court of Exchequer when the equity business was heard by the whole court? Yes.

Was it more satisfactory then than it has been since the alteration?—It was to many persons, because there were four judges; also there was a regular bar; therefore it was considered that the cause was more satisfactorily heard before the four judges than before a single judge; that I have heard stated very frequently.—*Gatty*.

That if a staff were given to it, the experiment would not succeed.

Is it your opinion that any alteration of the system of the Court of Exchequer in those respects would bring much additional business into the court?—I think it uncertain; there is a strong prejudice at present in the profession against the court. I think the probability is, that if we had a judge constantly sitting, that would bring business to the court to some extent.—*Borrey*.

Supposing the practice of the two courts to be alike, and the fees alike, and supposing two additional judges to be appointed to the Court of Chancery, so as to work off the arrear, and to dispatch the business easily and rapidly, what do you suppose would be the effect of such an alteration upon the business in the Court of Exchequer; would it extinguish the business of the Court of Exchequer, or not?—I do not know what would be the effect; many of the solicitors finding they could get the same despatch, and immediately under the same roof, would, I think, prefer the Court of Chancery.

Do you think it would extinguish, or nearly so, the business of the Court of Exchequer?—Yes; I think it would extinguish it to a very great extent. I think that very few solicitors would go there when they had all their causes with the same clerk in court, and in the same office in the Court of Chancery.

If the scheme of the Court of Chancery were to succeed, the Court of Exchequer would die a natural death; there would be no necessity to abolish it?—No.—*Weatherall*.

And therefore that the wise course is to close the Court.

In the last year there were no less than 523 petitions heard in the Court of Exchequer, and disposed of, of which 433 were respecting money paid in under acts of parliament?—If those petitions are railway petitions the parties had no option as to taking them to the court.

Still they are disposed of by the court?—Yes; but still that would not controvert what I said as to the parties exercising an option in not going into that court.

But is it not rather convenient that while the door of the Court of Chancery is kept closed there should be the door of another court open, in which justice may be administered?—Yes; but if I see that there is a court to which, though blocked up, parties go, and I see the door of another court open, but nobody going to it, I would rather incur expense in opening that which is blocked up than in improving the one which though open, the parties do not go to.

Till you see how wide that door could be opened, would it not be imprudent to shut the door?—At the time you shut the door of the Court of Exchequer you might open the door of the Court of Chancery to the same extent; and then I think there would be no imprudence in shutting the door of the Court of Exchequer.—*Sharpe*.

RECEIPTS OF THE SWORN CLERKS IN CHANCERY.

We have been urged to publish the whole of the Returns made by the Clerks in Court, but deem the following total of receipts and payments to be sufficient. We have omitted only some details shewing how much is derived from taxations, and how much from office copies, &c. See p. 145, *ante*, for some remarks on the result of these statements. The names of the Clerks in Court are not mentioned in the return, but we may state that the largest amounts are those of Mr. Gatty, Mr. Baines, Mr. Mills, Mr. Smith, and Mr. Wainwright. These are all above 5,000*l.* a-year: the first above 10,000*l.* The next in amount down to 1,500*l.* a-year, are Mr. Horne, Mr. Bicknell, Mr. Silver, and Mr. Lewin.

No.	Year.	Total Amount of Fees.	Fees accounted for to the Six Clerks for Office Copies.	Fees paid to the Bag-bearer & others.
		<i>£.</i> <i>s.</i> <i>d.</i>	<i>£.</i> <i>s.</i> <i>d.</i>	<i>£.</i> <i>s.</i> <i>d.</i>
7 {	1838	517 6 9	65 0 0	2 7 3
	1839	545 4 7	81 13 6	2 19 8
<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.				
8 {	1838	1,581 6 3	210 9 9	6 14 10
	1839	1,860 4 4	260 5 3	11 1 9
9 {	1838	855 4 9	124 7 3	8 5 3
	1839	962 17 6	130 15 6	7 10 3
10 {	1838	445 18 0	48 13 6	1 10 1
	1839	551 6 0	81 15 0	3 10 9
11 {	1838	464 0 0	54 5 3	4 15 6
	1839	772 2 6	78 16 9	5 2 4
12 {	1838	7,475 14 9	1,041 3 3	42 17 7
	1839	8,130 8 6	1,200 19 9	50 19 5
<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.				
13 {	1838	1,750 14 6	242 4 6	10 0 5
	1839	1,840 19 3	266 8 0	10 19 8
<i>N.B.</i> —In the above two columns, of course, are not included payments made for land-tax, and to agent, clerks, writers, and for stationery and office expenses, (amounting in the whole to a considerable sum.)				
14 {	1838	6,890 5 7	945 12 6	48 2 1
	1839	7,863 12 9	1,125 8 0	39 12 9
<i>N.B.</i> —The above amount of fees payable by us as Sworn Clerks does not, of course, include payments for land-tax, agent, clerks and writers, and for stationery and office expenses. This observation is applicable to Return for 1838, and Return for 1839.				
15 {	1838	111 10 6	16 6 9	16 11
	1839	113 8 10	12 15 6	13 2
16 {	1838	6,646 14 8	932 3 9	41 17 1
	1839	6,625 18 0	765 8 3	35 4 2
<i>N.B.</i> —In the above two columns, of course, are not included payments made for land-tax, and to agent, clerks, writers, and for stationery and office expenses (amounting in the whole to a considerable sum.)				
No.	Year.	Total Amount of Fees.	Fees accounted for to the Six Clerks for Office Copies.	Fees paid to the Bag-bearer & others.
		<i>£.</i> <i>s.</i> <i>d.</i>	<i>£.</i> <i>s.</i> <i>d.</i>	<i>£.</i> <i>s.</i> <i>d.</i>
1 {	1838	966 0 0	128 13 0	7 16 9
	1839	880 19 0	116 18 0	7 18 9
2 {	1838	2,850 1 4	362 8 0	19 1 2
	1839	3,172 14 6	433 18 3	19 6 0
3 {	1838	9,477 16 10	1,231 8 6	55 2 9
	1839	10,879 3 10	1,446 6 6	59 14 5
<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.				
4 {	1838	211 3 3	32 19 0	18 1
	1839	192 17 0	24 16 0	1 10 1
5 {	1838	134 18 9	12 2 9	1 10 0
	1839	143 13 8	15 2 6	1 12 0
<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.				
6 {	1838	208 15 10	21 8 6	1 8 11
	1839	157 13 5	20 9 6	17 6
<i>N.B.</i> —In these two columns, of course, are not included payments made for land-tax, and to agent, clerks, writers, and for stationery, and office expenses, &c.				

No.	Year.	Total Amount of Fees.			Fees accounted for to the Six Clerks for Office Copies.			Fees paid to the Bag-bearer & others.		
					£.	s.	d.	£.	s.	d.
17 {	1838	9,009	12	4	1,373	3	6	63	1	5
	1839	9,645	6	8	1,392	15	6	71	2	3
					<i>N.B.</i> —In the above two columns, of course, are not included payments made for land-tax, and to agent, clerks, writers, and for stationery and office expenses, (amounting in the whole to a considerable sum.)					
18 {	1838	1,130	7	8	162	9	8	6	17	4
	1839	1,450	17	6	212	16	3	7	6	4
19 {	1838	141	4	0	14	17	0	1	15	6
	1839	194	13	1	26	8	0	1	12	6
					<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.					
20 {	1838	469	1	10	62	10	0	3	10	3
	1839	488	5	10	56	13	6	3	4	11
21 {	1838	47	11	3	9	2	3			
	1839	20	2	6	3	8	9			
22 {	1838	193	19	5	25	10	9	1	15	7
	1839	313	1	9	37	1	0	3	9	3
23 {	1838	2,504	15	3	311	3	6	14	16	2
	1839	2,341	16	8	303	18	9	11	8	0
24 {	1838	559	18	9	76	9	6	2	8	8
	1839	723	16	7	87	4	0	4	2	2
					<i>N.B.</i> —In this column there are, of course, not included any office expenses, such as payment to agent, land-tax, stationery, &c.					
25 {	1838	79	14	9	8	13	9		18	6
	1839	96	2	6	14	2	6	2	17	0

SECOND REPORT ON THE PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

The Select Committee appointed to consider whether any and what improvement can be adopted in the mode of conducting Private Business; and who were empowered to report their opinion thereupon from time to time to the House—have further considered the matters to them referred, and agreed to the following resolutions.

1. That previous to the session of 1839, the constitution and practice of committees on private bills were so ill calculated to procure

due investigation of the subjects referred to them, or to lead to equitable decisions thereon, as to have drawn forth reiterated complaints, to the discredit of committees, and the disparagement of their proceedings.

2. That such evils were mainly attributable to a system of canvass, by which, in opposed private bills, the attendance of members was procured to vote upon questions without having heard the evidence, or understood the case; and in unopposed private bills, the names of members were used as having been in attendance upon committees from which they had been altogether absent. That such practice had the effect of causing members to sanction, or to appear to sanction, proceedings of which they had no cognizance, and in unopposed private bills, of consigning to the promoters of the bill without sufficient check the framing of provisions by which the rights and property of absent parties and of the public might, and in all probability would, be materially affected.

3. That to avert similar evils the House of Lords long since resorted to a system by which all unopposed private bills are subjected to the vigilant and uniform investigation and correction of the chairman of their lordships' committees, and in the session of 1838 adopted the plan of entrusting each opposed private bill to a committee of five lords, named in each case by a "Committee of Selection" for that purpose.

4. That it appears from the concurrent testimony of the witnesses examined, that the system adopted by the House of Lords for constituting committees on opposed private bills has been successful in averting the evils previously attendant on the committal of such bills, and that the adoption by this House, in the last session of Parliament, of a plan so far similar as regards the constitution of a "Committee of Selection," and the appointment by that committee of disinterested members on committees on private bills, has had the effect of abating, in great degree, practices which had excited general complaint and reprobation; and that therefore this plan ought, so far as regards opposed private bills, not being divorce bills, to be persevered in.

5. That as there are conflicting opinions in regard to the advantage derived from the service on committees on opposed private bills of members having local knowledge of the matters to which such bills refer, or whose constituents are interested therein, it would be inexpedient, without further experience, so far to assimilate the system of this House to that adopted in the House of Lords as to convert such committees into purely judicial bodies, and by consequence to exclude therefrom all members that have local knowledge, or whose constituents are locally interested.

6. That great difficulty has arisen in procuring the attendance of disinterested members on committees on unopposed private bills; and that although this difficulty has hitherto been in great measure met by the voluntary personal attendance of the members of the committee of selection on such committees as

a temporary expedient, it appears that they will not be able, nor could they be expected, to continue to give such attendance.

7. That in order to secure a due attention to the details of unopposed private bills, it would be expedient to adopt in this House a system analogous to that adopted by the House of Lords, and for this purpose to appoint an individual member, to whose uniform scrutinizing examination every unopposed private bill, not being a divorce bill, should be submitted; who should also be the chairman of the committee on every such bill, and who, together with the two or more members ordered to bring in the bill, should constitute the committee on such bill; and that such chairman, and one at least of such members, should be the quorum required to be present during the whole time that the bill is in progress through such committee.

8. That the chairman of the Committee of Supply, in consequence of his familiarity with the practice of the House, and the orders and proceedings thereof, appears to be the individual member to whom the House might most satisfactorily confide this duty. That he should be empowered, however, at any period of the investigation or proceeding of the committee of an unopposed private bill, to report to the House (if he should think fit to do so) his opinion that such bill should be withdrawn from the committee on "unopposed private bills," and be treated as "an opposed private bill." That to facilitate his endeavours in every case thoroughly to investigate, and in many cases to submit corrections of the numerous private bills which would be laid before him, it would be expedient that he should receive the assistance of the officer appointed to prepare the breviate of private bills. That for services so important and onerous, the additional compensation to be made to such chairman must be a matter for the judgment of the House; but it has appeared to this committee that an additional salary of 500*l.* a-year would be an adequate remuneration for the additional duties to be imposed on the chairman of the Committee of Supply; and that in the case of the future appointment of another individual to this office, his whole salary should be 1500*l.* a-year.

9. That the permission usually granted to agents to fix the first sittings of committees on private bills, without reference to the convenience of members, occasions an impediment to the punctual and satisfactory course of business, and injuriously affects the interests of those who are suitors to this House for private bills; that, therefore, it is expedient that the first sittings of all committees on private bills should be, as formerly fixed under the authority of the House, and that every postponement of any such first sitting should be permitted only under the sanction of a similar control. But as the "Committee of Selection" have facilities for ascertaining what arrangements are calculated to meet the convenience of all parties, it is expedient that the "Committee of Selection" should be empowered to appoint the time for holding the first sitting of every committee on a private bill, but in the case of

unopposed private bills after communication with the members ordered to bring in the bill; and that no postponement of such first sitting should take place unless such postponement and the duration of it be sanctioned by the "Committee of Selection."

9th July, 1840.

CHARACTERISTICS OF THE LAW.

A LEARNED Correspondent reminds us that we are sometimes accustomed to allow the gravities of Term to be relieved by the levities of Vacation; and he therefore sends us the following letter, which was written to a clergyman in answer to a note from him, enclosing to the writer the well-known extract from Hooker's Ecclesiastical Polity, l. i, s. 16.—"Of law there can be no less acknowledged, than that her seat is in the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage; the very least, as feeling her care, and the greatest, as not exempt from her power: both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

My Dear Sir,

I have to acknowledge the receipt from you of an extract from Hooker's Ecclesiastical Polity on—"Law." It must not be considered as any deduction from the obligation of your kind and complimentary communication that I say, I was before aware of the tenor of that extract.

Old Hooker is pleased to call LAW the mother of peace and joy:—I fear, however, that many of her offspring have had reason to lament their maternal inheritance, and to complain that what they derived *ex parte maternâ*, was, in the phraseology of lawyers, *damnosâ hæreditas*—an injurious inheritance.

A legal writer has denominated LAW as the daughter of justice and the mother of right. This is very fine as a phrase; but if we look into facts, how often shall we find that the daughter has been ruined in her bringing up; and that the mother has either miscarried, or has produced monstrous births?

A very clever satirical writer, after proposing to "consider the law,—because our laws are very considerable, both in bulk and in number," proceeds thus:—"Law is—law. [Perhaps the most expressive and *raisonnée* definition ever given of it.] "Law is—law. Law is like a country-dance, people are led up and down in it till they are tired.—Law is like a book of surgery, there are a great many terrible cases in it.—It is also like physic, they that take least of it, are best off.—Law is like a homely gentlewoman, very well to follow.—Law is like a scolding wife, very bad when it follows us.—Law is like a new fashion, people are bewitched to get into it.—It is also like bad weather, most people are glad when they

get out of it.”—*Geo. Alex. Stephen's Lecture on Heads.*

You are “a learned divine.” I am—(*hic est*, as commentators on MSS. are wont to say, *hiatus valde defendendus*;) I am a [—] lawyer; but tell me candidly, whose quotation, yours or mine, manifests the more intimate acquaintance with law?

I shall conclude a short letter in the words in which a lawyer, or a parliamentary orator, often concludes a long speech.—“One word more, and I have done!”

You have, doubtless, heard of the eight requisites to success in a law-suit:—

1. A good cause,
2. A good judge,
3. A good counsel,
4. A good attorney,
5. A good witness,
6. A good jury,
7. A good purse: and last, but not least,
8. GOOD LUCK.

I remain, my dear Sir,
Not less your Friend,
For being your Lawyer,

To the Rev. Dr. —, C.
&c. &c.

ANCIENT CASES.

RETAINER OF COUNSEL BY THE YEAR.

FROM the curious collection of ancient cases and documents, forming the appendix to “The Serjeants’ Case,” edited by Mr. Serjeant Manning, we extract the following report, and refer the reader to the learned Serjeant’s notes on the subject.

“Debt on arrears of an annuity, brought by John Bruin, Esquire, against the Abbot of Chester, upon a demand of 40*l*. And he declares that one *R.*, formerly abbot of the same place, predecessor of this same abbot, by his deed granted to him an annual rent of 40*s.*, issuing out of his monastery aforesaid, *pro consilio suo eidem R., nuper abbati, et conventui ejusdem loci, impenso, et in posterum impendendo*: and shews how at the making of the said deed he was, and yet is, a man learned in the law of the land, and how he had given to the said *R.* *nuper abbati et conventui, consilium suum apud W. in negotiis Domus prædictæ agendis, ad proficuum ejusdem Domus*; and afterwards the said *R.* died, and the said *J.*, the now defendant, was elected and made abbot of the same place; and for so much arrears in the life of the said abbot, he (*J. Bruin*) had brought his action, &c.

Littleton, Serjt., demanded oyer of the deed; *et non potuit habere*, for that it was after im-
parlance. Wherefore he said that the deed bore date at *J.* in the county of Chester, which

is a county palatine, and prayed judgment of the writ brought in Middlesex.

Laicon, Serjt.—The deed was sealed and delivered in the county of Middlesex, where we have brought our action; without this, that it bears date at *J.* in the county of Chester.

Littleton, Serjt.—Now shew the deed, that the Court may try it, for he pleads that plea to the intent that he may have oyer of the deed, *quod nota*.

Laicon, Serjt., willingly shewed the deed to the Court to try the issue, but the trial must be peremptory between us.

Littleton, Serjt.—Certainly not, but only answer.

Priest, C. J.—If you had pleaded that it appears before us that the deed bears date in Chester, as if the deed had been enrolled in *hæc verba* &c., then we would have seen the roll, and peradventure it should be but an answer; for that it appears before us of record; but in this case you do not plead so, to wit, that it appears before us, but you have alleged matter in fact, to wit, that the deed bears date at Chester, which ought to be tried by the deed, for that the deed is not enrolled in *hæc verba*, so that he ought to give day to bring the deed, to try that issue; in which case perhaps it will be peremptory. Wherefore advise you well. Wherefore—

Littleton, Serjt., saith, that as to so much arrears being in arrear from such a feast following &c., *actio non* &c.; for he says, that before the 20th day of September, a tenth was granted by the clergy of (the province of) Canterbury to the king, to wit, on such a day and year &c., and the abbot was assigned by such a one, bishop &c. to be a collector of the said tenths; and he shewed to the said *J. B.*, at Chester aforesaid, that the king who now is, had pardoned him all manner of occupations, to wit, to be collector, and many others &c., and shewed a confirmation of the same grant from divers kings, and the said *J.* nuper abbot prayed him to be of his counsel, and there, at Chester aforesaid, he refused. And he prayed judgment if for any arrears being after the said refusal, action &c.; and as to the arrears being in arrear before &c. he says that he did not give his counsel to the said abbot and convent in manner &c.

Moile, J.—It seems to me that the count is not good; for he has said and counted that he gave him counsel at Westminster in *negotiis domus agendis*, and does not shew how he gave him counsel, nor in what things.

Priest, C. J.—That is not needed; for he is retained with the abbot to give him counsel, and he has said that he has given him counsel in *agendis*, that shall be understood to all things which he wanted, and that is better than to say specially in such a thing and such &c.; for by that reason he would shew all the causes in which he had given him counsel, and that would be very long to do. Wherefore the count is good enough generally, to wit, that he gave him counsel in *agendis* &c. And if the defendant says that he did not give him

counsel &c., then the plaintiff shews in what things and matters he has given him counsel, and to that the defendant shall answer; but *prima facie* the count is good generally. *Quod curia concessit.* But it was held by the court that he was bound to say in his count as he has done, to wit, that he has given him counsel, which was to the profit or to the use of the house, or otherwise the counsel will not be good: for the action is not maintainable against the successor upon any contract or writing made by the predecessor, unless its effect come to the profit of the house; because this grant was merely the deed of the abbot, the predecessor, and not the deed of the convent; wherefore he ought to shew that the thing wherefore the deed was made, came to the use of the house: as it is of a simple obligation contract, and such like acts by the predecessor solely. But if the action had been brought against the same abbot who made the grant, there it would not have been necessary to shew whether he had given him counsel or not; for if the abbot had not asked of him any counsel, yet he should have his annuity; but so it is not against the successor, for if he do not give any counsel, he shall not have that action for those arrears against the successor. And such was the opinion of the Court. See the diversity.

Then this question (was raised)—if the predecessor buy certain goods for the use of the house, and that is his intent, and before they come to the use of the house, he dies, so that they do not in fact come to the use of the house, whether that shall charge the successor or not.

Littleton, Serjt.—In obligation made by the predecessor, he shall wage his law, for this that he declares, that the thing wherefore the obligation was made, came to the use of the house.

Danby, J.—The successor cannot wage his law in an action of debt brought upon an obligation made by his predecessor. *Quod.*

Moile, J. concessit: for in that case he declares upon the obligation, as the matter is; and if he wish to declare upon the simple contract against the successor, he shall say that he has an obligation of his predecessor for the said duty, and abate his writ. *Ad quod non fuit responsum.*

Quære, if it be a plea for the successor to say, that he (the plaintiff) has a bond of his predecessor for the duty; for the contrary has been held before: *ideo quære.*

Danby, J., held, that the first plea went to the whole, to wit, the refusal, because it was his own act. And the opinion of the Court was against him. As if I grant an annuity to one until he be beneficed, and then I offer to him a reasonable benefice, which he refuses, that refusal is his own act, yet he shall have an action of debt for the arrears before the refusal; so here: but in a writ of annuity, in both cases the refusal is an answer for all, and goes in extinguishment of the whole annuity; for by the refusal the annuity is determined; and therefore the refusal goes to the whole, but not in a writ of debt for the arrears; which

proves the annuity is expired; and so is the diversity. *Quod nota.*

Lalton, Serjt. As to the first plea, to wit, the refusal, he says, that he did not refuse to give him counsel; ready &c.; and the other the contrary &c. *et sic ad patriam.* And it ought to be tried by them of the county palatine.

Comberford, Prothonotary, said, that they shall write to the keeper of the palace to try that issue, and when they have tried that issue, all the record will be remanded, and the judgment given in this court; as it is of a voucher in a county palatine, this court shall write to them to try the voucher, or summon the vouchee, and when they have done that, it shall remain in this court, and according thereto they shall proceed here. *Quod nota.*

And as to the last plea,—that the plaintiff did not give to the said *J.*, abbot, and to the convent, his counsel in manner &c.; he said that to that plea, pleaded in the manner &c.; *et sic adjudicium.* *Quod nota.* M. 39 Hen VI. fo. 21, pl. 31.

MISCELLANEA.

ANECDOTES OF CHANCELLORS AND JUDGES.

The following are selected from the amusing work called "Law and Lawyers," which we lately noticed:

LORD THURLOW AND PITT.—"Thurlow did not altogether like the tone of conscious superiority which the youthful Prime Minister assumed towards him. Once, at table, Pitt was expatiating on the superiority of the Latin over the English language; and cited, as an instance, the fact that two negatives made a thing more positive than one affirmative could do. 'Then your father and mother,' exclaimed Thurlow, in his gruff style, 'must have been two negatives, to have made such a positive fellow as you are.'

LORD DENMAN.—"During the time the Reform Bill was going through Committee, he came frequently into collision with Sir Charles Wetherell, and the conflict was extremely amusing. The worthy Knight, with all his quaint diction and ingenious turns, was no match for the sturdy 'up-right and down-straight' style of the Whig Attorney General. He, however, managed to avoid the appearance of defeat, and was always ready, however worsted, to resume the combat whenever occasion should arise. During one of these tourneys, Sir Charles, in a long, rambling, but amusing speech, compared Old Sarum to Macedon. The retort was quick, 'Yes,' replied Denman, 'Macedon was ruled by an Alexander.' Mr. Alexander, the East India Director, as is well known, for some time, represented this borough in Parliament."

"It is well known, that when Mr. Brougham received his silk gown, Mr. (now Lord) Den-

man complained, at a dinner which was given to him by one of the city companies, that he had been most unfairly passed over. This remark excited much observation at the period; and it was said that he had no right to have expected other treatment, considering the coarse insinuations he uttered in his defence of the Queen before the Lords—alluding to the famous Greek quotation, of which so much has been said. Rumours of such remarks having reached Mr. Denman, he immediately waited on the Chancellor, Lord Lyndhurst, and begged him to assure his Majesty that he had never used the quotation in the sense that had been ascribed to it. This the Chancellor promised to do; but, on further inquiries, after the lapse of some months, he informed Mr. Denman that he had been unable, or had not ventured, to mention the subject to his royal master. (On this, Mr. Denman obtained an interview with the Duke of Wellington, and explained the matter to him. The Duke said that he conceived he had done no more than what his duty as an advocate required; and undertook himself to bring the subject under the attention of the King. In a few days the patent was made out. This conduct, so creditable to the illustrious Duke, and so consistent with his character, we need hardly comment on. It was justly appreciated by the whole profession.)

LORD ELLENBOROUGH.—"When he attended the levee after his appointment, the King said to him, 'Mr. Law, have you ever been in Parliament?' He replied that he had not. 'I am glad to hear it: my Attorney General ought not to have been in Parliament, for then, you know, he will not be obliged to eat his own words.' Vigour, which sometimes degenerated into coarseness, was the characteristic of his oratory. In a debate on the regency question, he observed, that in the reign of Henry VI. the revenues of the Duchy of Lancaster were under the control of the King, when some one remarked, that the law was shortly afterwards changed. 'Aye,' said the Attorney-General, 'in times of trouble. Honourable gentlemen opposite, seem well versed in the troubles of their country.' There was a loud cry of 'order,' from the opposition."

LORD ERSKINE.—When Lord Erskine was at the bar, a case was laid before him for his opinion. He found that it involved a principle of equity law: he declined therefore to say more on it, than that it should be submitted to some gentleman practising on the other side of Westminster Hall. In a month afterwards, he was himself Chancellor. Nor was his promotion otherwise than in accordance with the custom in this country, that to the leading lawyer of the party in power should be conferred the great seal and the presidency of the chief court of equity jurisdiction. William III. was anxious to make the famous Holt, chancellor, but that upright judge declined the honour. "May it please your Majesty," said he, "I never had but one chancery suit in my life, and that I lost. I am unfit." He applied himself to farming pursuits, but suc-

ceeded in this branch little better than he did as a chancellor. One day, George Colman and Jack Bannister were dining with him. After dinner he told them with some pride, that he had three thousand head of sheep. 'I see your Lordship,' exclaimed Colman, "has still an eye to the woolsack."

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

Autumn Circuits, 1840.

MIDLAND CIRCUIT.

H. R. REYNOLDS, Esq. Chief Commissioner.

Essex, at Chelmsford, Tuesday, Nov. 10.
Essex, at Colchester, Wednesday, Nov. 11.
Suffolk, at Ipswich, Thursday, Nov. 12.
Norfolk, at Yarmouth, Saturday, Nov. 14.
Norfolk, at Norwich and City, Monday, Nov. 16.
Norfolk, at Lynn, Wednesday, Nov. 18.
Suffolk, at Bury Saint Edmunds, Thursday, Nov. 19.
Cambridgeshire, at Cambridge, Friday, Nov. 20.
Huntingdonshire, at Huntingdon, Monday, Nov. 23.
Northamptonshire, at Peterborough, Tuesday, Nov. 24.
Lincolnshire, at Lincoln and City, Wednesday, Nov. 25.
Nottinghamshire, at Nottingham and Town, Friday, Nov. 27.
Derbyshire, at Derby, Monday, Nov. 30.
At the city of Lichfield, Tuesday, Dec. 1.
Staffordshire, at Stafford, Wednesday, Dec. 2.
Shropshire, at Shrewsbury, Saturday, Dec. 5.
Warwickshire, at Birmingham, Tuesday, Dec. 8.
Shropshire, at Oldbury, Thursday, Dec. 10.
At the City of Coventry, Friday, Dec. 11.
Warwickshire, at Warwick, Saturday, Dec. 12.
Leicestershire, at Leicester, Tuesday, Dec. 15.
Northamptonshire, at Northampton, Thursday, Dec. 17.
Bedfordshire, at Bedford, Friday, Dec. 18.
Buckinghamshire, at Aylesbury, Saturday, Dec. 19.

HOME CIRCUIT.

J. G. HARRIS, Esq., Commissioner.

Sussex, at Horsham, Friday, Nov. 6.
Kent, at Dover, Friday, Nov. 13.
At the City of Canterbury, Saturday, Nov. 14.
Kent, at Maidstone, Tuesday, Nov. 17.
Hertfordshire, at Hertford, Friday Dec. 4.

NORTHERN CIRCUIT.

T. B. BOWEN, Esq., Commissioner.

Rutlandshire, at Oakham, Saturday, Oct. 10.
Yorkshire, at Sheffield, Monday, Oct. 12.

Yorkshire, at Wakefield, Wednesday, Oct. 14.
Yorkshire, at York and City, Tuesday, Oct. 20.
At the Town of Kingston-upon-Hull, Thursday, Oct. 22.
Yorkshire, at Richmond, Saturday, Oct. 24.
Durham, at Durham, Monday, Oct. 26.
Northumberland, at Newcastle-upon-Tyne and Town, Wednesday, Oct. 28.
Cumberland, at Carlisle, Friday, Oct. 30.
Westmorland, at Appleby, Monday, Nov. 2.
Westmorland, at Kendal, Tuesday, Nov. 3.
Lancashire, at Preston, Wednesday, Nov. 4.
Cheshire, at Chester and City, Friday, Nov. 6.
Flintshire, at Mold, Monday, Nov. 9.
Denbighshire, at Ruthin, Tuesday, Nov. 10.
Anglesey, at Beaumaris, Thursday, Nov. 12.
Carnarvonshire, at Carnarvon, Friday, Nov. 13.
Merionethshire, at Dolgelly, Monday, Nov. 16.
Montgomeryshire, at Welchpool, Wednesday, Nov. 18.
Lancashire, at Liverpool, Friday, Nov. 20.
Lancashire, at Lancaster, Tuesday, Nov. 24.

SOUTHERN CIRCUIT.

W. J. LAW, Esq., Commissioner.

Berkshire, at Reading, Thursday, Oct. 22.
Oxfordshire, at Oxford, Saturday, Oct. 24.
Worcestershire, at Worcester and City, Tuesday, Oct. 27.
Herefordshire, at Hereford, Thursday, Oct. 29.
Radnorshire, at Presteigne, Friday, Oct. 30.
Breconshire, at Brecon, Monday, Nov. 2.
Carmarthenshire, at Carmarthen and Borough, Wednesday, Nov. 4.
Cardiganshire, at Cardigan, Friday, Nov. 6.
Pembrokeshire, at Haverfordwest and Town, Saturday, Nov. 7.
Glamorganshire, at Swansea, Tuesday, Nov. 10.
Glamorganshire, at Cardiff, Thursday, Nov. 12.
Monmouthshire, at Monmouth, Saturday, Nov. 14.
Gloucestershire, at Gloucester and City, Tuesday, Nov. 17.
At the City of Bristol, Friday, Nov. 20.
Somersetshire, at Bath, Monday, Nov. 23.
Somersetshire, at Wells, Tuesday, Nov. 24.
Devonshire, at Plymouth, Friday, Nov. 27.
Cornwall, at Bodmin, Saturday, Nov. 28.
Devonshire, at Exeter and City, Wednesday, Dec. 2.
Dorsetshire, at Dorchester, Saturday, Dec. 5.
Wiltshire, at Salisbury, Tuesday, Dec. 8.
At the Town of Southampton, Wednesday, Dec. 9.
Hampshire, at Winchester, Thursday, Dec. 10.

LIST OF NEW PUBLICATIONS.

Abbott on the Law of Merchant Ships and Seamen. By Charles Lord Tenterden, late Chief Justice of England. The Sixth Edition. By William Shee, Serjeant at Law. Royal 8vo., price 1*l.* 10*s.* 6*d.*

The New Practice of the Courts of Law at

Westminster, with Forms embodied in the Text for the use of Town and Country Practitioners. By William Bagley, of the Inner Temple, Esq., Barrister at Law. 1 vol., royal 8vo., price 1*l.* 14*s.* boards.

The Law and Practice as to Costs; with Statutes and Practical Forms. By G. B. Mansel, Esq., Barrister at Law. Price 9*s.* cloth.

This Treatise presents, in a condensed view, the Law and Practice as to Costs in the Superior Common Law Courts, the Petty Bag Office in Chancery, the Palatine Courts of Lancaster and Durham, the Exchequer Chamber, and House of Lords, including Proceedings against Crown Debtors, and in cases of Dower, Quare Impedit, and Ejectment, Prohibitions, Mandamus, and Quo Warranto.

Commentaries on the Laws of England, in the order, and compiled from the Text of Blackstone, and embracing the alterations down to the present time. By John Bethune Bayly, of the Middle Temple, Esq. 1 vol. royal 8vo., price 1*l.* 8*s.* boards.

A Comprehensive View of the Law of Joint Ownerships, comprising and characterising every Species of Joint or Undivided Estates, Interests, and Authorities, as existing under the present state of the Law. By Richard Curgenven Smith, Attorney at Law. Price 8*s.* boards.

A Treatise on the Law of Landlord and Tenant; grounded on the Text of Comyns, and embracing the important parts of Woodfall and Chambers. By R. H. Coote, Esq., of Lincoln's Inn, Barrister at Law. 8vo. 1*l.* 1*s.*

Directions for Drawing Abstracts of Title: with Observations on the necessity of requiring a Sixty Year's Title, notwithstanding the recent Statute of Limitations; together with a Collection of Precedents, whereby a young man may gain sufficient knowledge to enable him to draw every kind of document without the assistance of the principal. By William Gardnor, Attorney at Law. 18mo., cloth, price 3*s.*

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

June and July.

Frederick John Reed, Bread Street.
 John Lawrence Wright, South Square, Gray's Inn.
 Henry Heane, Newport, Salop.
 Henry Nicol, Queen Street, Cheapside.
 James Frederic Slade, Argyle Street.
 Joseph Heron, Manchester.
 Frederick George Cox, Bennet's Hill, Doctors' Commons.
 John Green, Woburn.

LAW PROMOTIONS.

SERJEANTS AT LAW.

Stephen Gaslee, Esq., who was called to the Bar on the 16th June, 1832.

COLONIAL APPOINTMENTS.

Robert Langslow, Esq., one of the Judges of Ceylon. June 19.
 Charles D. Day, Esq., Solicitor General of Lower Canada. July 1.
 Charles Warner, Esq., Solicitor General of Trinidad. July 2.
 Robert Bernard, Esq., Advocate General and Crown Solicitor of South Australia. July 2.

MASTERS EXTRAORDINARY IN CHANCERY.

From 23d June to 17th July, 1840, both inclusive, with dates when gazetted.

Hazel, Edward Wells, Oxford. June 23.
 Wace, George, Shrewsbury, Salop. July 3.
 Whittenbury, John Llewellyn, Shrewsbury. July 3.
 Stamp, George, Caistor, Lincoln. July 3.
 Baker, Thomas, Manchester. July 3.
 Wragge, Clement Ingleby, Stourbridge, Worcester. July 3.
 Wood, James, Bradford, York. July 3.
 Hawkward, George, Ashton-under-Lyne. July 7.
 Perry, Henry, Whitehaven, Cumberland. July 10.
 Pallett, James, Birmingham. July 14.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 23d June to 17th July, 1840, both inclusive, with dates when gazetted.

Sangster, Martin, and George Hawkins Pugh, Queen Street Place, Southwark Bridge, Attorneys and Solicitors. June 26.
 Watson, Thomas, and John Buchanan, Whitby, York, Attorneys and Solicitors. June 30.
 Seddon, William, William Mawson, and W. E. Lycett, Manchester, Attorneys and Solicitors. July 7.
 Straford, Joseph Cooper, and John Surman Cox, Cheltenham, Gloucester, Attorneys and Solicitors. July 7.
 Richards, John, and James Motteram, Birmingham, Attorneys and Solicitors. July 14.

BANKRUPTCIES SUPERSEDED.

From 23d June to 17th July, 1840, both inclusive, with dates when gazetted.

Tealdi, Pietro Ascanio, Manchester, Merchant, July 26.
 Howell, James, Bradford, Wilts, Baker and Tal-
 low Chandler. July 7.
 Lees, Job, Manchester, Dealer. July 7.

BANKRUPTS.

From 23d June to 17th July, 1840, both inclusive, with dates when gazetted.

Ackerman, John, Bruton, Somerset, Draper and Mercer. *Overbury*, Friday Street, London. June 23.
 Allen, Joseph, Macclesfield, Chester, Banker and Silk Throwster. *Parrott & Co.*, Macclesfield; *Lucas & Co.*, Argyll Street, Regent Street. July 14.
 Allen, Henry, Macclesfield, Chester, Banker and Silk Throwster. *Parrott & Co.*, Macclesfield; *Lucas & Co.*, Argyll Street, Regent Street. July 14.
 Bothamley, George, Sheffield, York, Plumber and Glazier. *Rodgers*, King Street, Cheapside; *Broadbent*, Sheffield. June 26.
 Bloxam, George Frederick, Broad Street, London, Wine Merchant. *Turquand*, Off. Ass.; *Venning & Co.*, Tokenhouse Yard. June 30.
 Benbow, Richard, Liverpool, Timber Merchant and Timber Broker. *Hulden & Co.*, Liverpool; *Walmley & Co.*, Chancery Lane. June 30.
 Battersby, John, Whitechapel Road, Window Glass Cutter. *Cannan*, Off. Ass.; *Francis*, Fenchurch Buildings. July 7.
 Brookes, George, Manchester, Draper, Flour Dealer and Shopkeeper. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 10.
 Baxter, George, Long Lane, Bermondsey, Surrey, Currier. *Green*, Off. Ass.; *Dickson*, Bocklersbury. July 14.
 Beer, William, Washington, Sussex, Draper and Timber Dealer. *Padwick*, Horeham; *Waugh*, Great James Street. July 14.
 Bailey, Tabitha, Thomas Bailey, and Joshua Bailey, Batley Carr, near Dewsbury, York, Wool-
 len Manufacturers. *Oldroyd or Scholes*, Dewsbury; *Wiglesworth & Co.*, Gray's Inn Square. July 14.
 Banner, Francis, Luton, Bedford, Straw Hat Manufacturer. *Clark*, Off. Ass.; *Taylor*, Featherstone Buildings. July 17.
 Boardman, William, Ashton-under-Lyne, Lancaster, Plumber and Glazier. *Milne & Co.*, Temple; *Winstanley*, Manchester. July 17.
 Beasley, Robert, Gaddeaby, Leicester, and of Leicester in the said county, Worsted Spinner. Messrs. *Baxter*, Lincoln's Inn Fields; *Maddock*, Leicester. July 17.
 Crowther, Thomas, Liverpool, Wine, Spirit and Provision Merchant. *Holme & Co.*, New Inn; *Bradshaw & Co.*, Liverpool. June 23.
 Cookson, Rowland, Pendleton, Manchester, Commission Agent and Broker. *Battye & Co.*, Chancery Lane; *Archer*, Ossett. June 23.
 Coleman, John, Ipswich, Suffolk, Builder, Painter, and Glazier. *Capes & Co.*, Bedford Row; *Woodruffe*, Ipswich. June 23.
 Cowper, William Frederick, Mumps, near Oldham, Lancaster, and of Delph, York, Mercer and Draper. *Salé & Co.*, Manchester; Messrs. *Baxter & Co.*, Lincoln's Inn Fields. June 26.
 Clarke, Charles, Cambridge, Gun Maker. *Vincent & Co.*, Temple; *Ashton*, Cambridge; *Hodgson*, Birmingham. June 26.
 Carter, John Hellewell, and Charles Lawrence, Huddersfield, York, Machine Makers. *Lever*, King's Road, Bedford Row; *Barker & Co.*, Huddersfield. June 26.
 Chadwick, William, and John Chadwick, Ashton-under-Lyne, Lancaster, Cotton Spinners. *Fax*, Finsbury Circus; *Earle*, Ashton-under-Lyne. June 30.

- Chapman, Thomas Wood, and John Parker, of the Grove, Southwark, Surrey, Flax Spinners. *Gibson*, Off. Ass.; *Smith*, Chancery Lane. July 7.
- Cousins, William, Salford, Lancaster, Joiner and Builder. *Cooper & Co.*, Manchester; *Adlington & Co.*, Bedford Row. July 7.
- Clark, Adam, Market Raisin, Lincoln, Draper and Grocer. *Wilkinson*, Lincoln; *Wood & Co.*, Corbet Court, Gracechurch Street. July 10.
- Capella, Michael, Birmingham, Furniture Broker. *Lovell*, South Square, Gray's Inn; *Smith*, Birmingham. July 14.
- Cockrell, John, and Edward Cockrell, Basinghall Street, London, Wool Brokers. *Graham*, Off. Ass.; *Heathcote & Co.*, Coleman Street. July 17.
- Clarke, Henry, Northampton, Baker and Beer-seller. *Rowlatt*, Northampton; *Hird & Co.*, Little Argyle Street, Regent Street. July 17.
- Dobson, John, York, Woollen Draper. *Wiglesworth & Co.*, Gray's Inn Square; *Hopps*, Leeds. June 30.
- Dowling, James Henry, Gloucester, Scrivener. *A'Beckett & Co.*, Golden Square; *Matthews*, Gloucester. July 7.
- Dingle, William, Plymouth, Devon, Butcher. *Serr*, Lombard Street; *Elworthy*, Plymouth. July 7.
- Dillon, John, Hereford, Brazier, and Tin Plate Worker. *Cuwelje & Co.*, Southampton Buildings, Chancery Lane; *Bellamy*, Hereford. July 10.
- Dowden, Charles William Henry, Bridge House Place, Newington Causeway, Surrey, Chemist and Druggist. *Graham*, Off. Ass.; *Hook*, King's Arms Yard. July 14.
- Day, Edward Elmsall, Bristol, Surgeon and Apothecary. *Day*, Bristol; *Gilham*, Symond's Inn. July 14.
- Edwards, Thomas, Phoenix Iron Works, Hanley, Stoke-upon-Trent, Stafford, Ironfounder. *Price & Co.*, Lincoln's Inn; *Bishop*, Shelton-hall, Staffordshire Potteries. July 14.
- Ferris, Richard, Bristol, and James Henry Butler, and John Butler, Liverpool, Merchants and Ship Owners. *Brittan*, Bristol; *Howard*, Liverpool; *Darison*, Cheapside, London. June 26.
- Fletcher, Charles, Horsforth, York, Cloth Manufacturer. *Walker*, Furnival's Inn; *Blackburn*, Leeds. July 14.
- Gisborne, John, Brynderry, Monmouth, Cattle and Sheep Salesman. *Gregory & Co.*, Clement's Inn; *Williams*, Brecon. June 23.
- Greatwood, William, Birmingham, Money Scrivener. *Stafford*, Buckingham Street, Strand. July 3.
- Gibbs, John, Wembdon, Somerset, Brewer and Hop Merchant. *Adlington & Co.*, Bedford Row; *Reeves & Co.*, Taunton. July 7.
- Gurney, Joseph, Sheffield, York, Ivory Scale Cutter. *Dison*, Sheffield; *Battye & Co.*, Chancery Lane. July 7.
- Grime, Jeremiah, Bury, Lancaster, Engraver to Calico Printers. *Clarke & Co.*, Lincoln's Inn Fields; Messrs. *Grundy*, Bury. June 30.
- Glass, Edward, Oxford Street, Wine and Spirit Merchant. *Clark*, Off. Ass.; Messrs. *Haines*, Tavistock Street, Tavistock Square. July 7.
- Gledhill, Thomas, Dewsbury Moor, Dewsbury, York, Clothier. *Jaques & Co.*, Ely Place; *Denn*, Batley. July 14.
- Holdaway, William, Petersfield, Southampton, Innkeeper. *Park & Co.*, Essex Street, Strand. June 23.
- Hart, Edward H at, Gateshead, Durham, lass Manufacturer. *Meggison & Co.*, King's Road, Bedford Row; *Donkin & Co.*, Newcastle-upon-Tyne. June 26.
- Henderson, James, Poland Street, Oxford Street, Carpenter. *Whitmore*, Off. Ass.; *Pain & Co.*, Great Marlborough Street. July 3.
- Hall, Thomas, jun., Hackney Road, Middlesex, Baker. *Alsager*, Off. Ass.; *Hilleary & Co.*, Leadenhall Street. July 3.
- Hood, George, Brownhills, Burslem, Stafford, Earthenware Manufacturer. *King*, Furnival's Inn; *Cooper*, Tunstall. July 3.
- Hogg, John, and Francis Sharpe, Leeds, York, Cloth Merchants. *Wilson*, Southampton St., Bloomsbury; *Payne & Co.*, Leeds. July 10.
- Huxham, Henry, Swansea, Glamorgan, Porter Merchant. *Pulling & Co.*, Hare Court, Temple; *Collinson*, Swansea. July 10.
- Hunton, John, York, Joiner. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Blanchard & Co.*, York. July 10.
- Holden, Elizabeth, Manchester, Innkeeper. *Adlington & Co.*, Bedford Row; *Lees*, Manchester. July 14.
- Herd, James, Liverpool, Brewer. *Vincent & Co.*, Temple; *Wardle*, Liverpool. July 17.
- Jackson, James Pickmore, and Peter Jackson, Manchester, Wool Dealers and Furriers. *Slater & Co.*, Manchester; *Milne & Co.*, Temple. June 23.
- Jardine, John, Haverfordwest, Timber Merchant. *Rees or Gwynne*, Haverfordwest; *Hastings*, Harpur Street, Red Lion Square. June 23.
- Jacob, Henry, Manchester, Merchant and Jeweller. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 14.
- Jackson, John Wren Vipond, Wolsingham, Durham, Spirit and Porter Merchant and Tea and Coffee Dealer. *Rogerson*, Norfolk Street, Strand; *Allison*, Darlington; Messrs. *Marshall*, Durham. July 17.
- Knight, Edward, Southampton, Upholsterer and Cabinet Maker. *Plucknett & Co.*, Lincoln's Inn Fields; *Mackey*, Southampton. July 7.
- Lucas, Edward Avery, Salford, Lancaster, Calico Printer. *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Bury. June 23.
- La Beaume, Anthony Joseph Michael, Argyle Street, Regent Street, Medical Galvanist. *Green*, Off. Ass. June 30.
- Ladewig, Frederick, Tottenham Court Road, Confectioner. *Clarke*, Off. Ass.; *Few & Co.*, Henrietta Street, Covent Garden. July 3.
- Little, William, Liverpool, Stay and Straw Hat Manufacturer. *Chester*, Staple Inn; *Gandy*, Liverpool. July 7.
- Langmead, William, Teignmouth, Devon, Banker. *Whiteway*, George Street, Mansion House; *Tozer*, Teignmouth; *Pearce*, Newton Abbott. July 7.
- Leigh, John, Consall, Stafford, Coal Owner, Coal Merchant, and Flint Grinder. *Dove*, Carey Street; *Smith & Co.*, Rugeley. July 7.
- Lamb, Robert, Stockton, Durham, Iron Merchant. *Levr*, King's Road, Bedford Row; *Peacock*, Darlington. July 10.
- Lord, John, and John Bennett, Batley Carr, Dewsbury, York, Millwrights. *Jaques & Co.*, Ely Place; *Dran*, Batley. July 14.
- Lloyd, Thomas, Market Deeping, Lincoln, Grocer and Draper. *Hindmarsh & Son*, Crescent,

- Jewin Street, Cripplegate; *Bell*, Bourne. July 14.
- Mitchell, Alexander, Devizes, Wilts, Tea Dealer. *Cattlin*, Ely Place. June 23.
- Malcolm, Joseph, Berwick Street, Soho, Victualler. *Graham*, Off. Ass; *Gole & Co.*, Lime Street, London. July 3.
- Marsh, Henry, Plymouth, Devon, Coal Merchant. *Kelly*, Plymouth; *Elworthy*, Plymouth; *Serr*, Lombard Street. July 3.
- Munroe, William, and Thomas Munroe, Milk Street, London, Merchants. *Turquand*, Off. Ass.; *Turner & Co.*, Basing Lane. July 14.
- Morley, Josephus, Kingston-upon-Hull, Coal and Porter Merchant. *Bell*, Bedford Row; Messrs. *Hill*, Hull. July 17.
- Nixon, William, Boston, Lincoln, Ironmonger. *Phillips*, Size Lane; *Partridge*, Birmingham. July 14.
- Oldfield, Richard, Dawpeen, Dewsbury, York, Card Maker. *Oldroyd or Scholer*, Dewsbury; *Buttye & Co.*, Chancery Lane. July 14.
- Pape, John, Leeds, York, Tailor and Draper. *Battye & Co.*, Chancery Lane; Messrs. *Lee*, Leeds. July 23.
- Phelps, Robert Alfred, Pancras Lane, Queen Street, Cheapside, Ink Manufacturer. *Graham*, Off. Ass.; *Bodman*, Queen Street, Cheapside. June 26.
- Parkinson, Abraham, Leeds, York, Wine and Spirit Merchant. *Richards & Co.*, Lincoln's Inn Fields; *Holme*, Leeds. July 17.
- Robins, John and Charles Williams, London Wall, London, Carriers. *Edwards*, Off. Ass.; *Hopkinson*, Red Lion Square. June 26.
- Rhodes, Travis, Shaw, near Oldham, Lancaster, Iron Founder and Machine Maker. *Sale & Co.*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. June 26.
- Roberts, James, Claretton, York, Horse Dealer and Merchant. *Blower & Co.*, Lincoln's Inn Fields; *Dewes*, Knareborough. June 26.
- Reid, Andrew Miller, Liverpool, Commission Agent. *Tindall & Co.*, Runcorn, Cheshire; *Chester*, Staple Inn. June 30.
- Rowbottom, William, Mottram in Longendale, Chester, Grocer and Tallow Chandler. *Pollitt*, Hyde, Cheshire; *Appleby*, King's Road, Bedford Row. July 10.
- Robinson, William, Liverpool, Provision Dealer. *Hime*, Liverpool; *Chester*, Staple Inn. July 10.
- Roberts, Joseph, Clodoch Mills, Hereford, and Joseph Roberts, jun., Abergavenny, Monmouth, Wine and Spirit Merchants and Corn Dealers. *Phillipotts & Co.*, Monmouth; *Freeman & Co.*, Coleman Street. July 17.
- Rickerby, George, Birmingham, Draper and Tea Dealer. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. July 17.
- Slatyer, John, Witney, Oxford, Innholder. *Crouch*, Southampton Buildings, Chancery Lane; *Westell*, Witney. June 26.
- Smarr, Benjamin Barker, Honiton, Devon, Scrivener. *Rhodes & Co.*, Chancery Lane; *Flood & Co.*, Honiton. June 26.
- Stainthorpe, John, Hexham, Northumberland, Brewer and Maltster. *Johnson & Co.*, Hexham; *Meggison & Co.*, Bedford Row. July 3.
- Staveacre, Joseph, Sheepwashers within Oldham, Lancaster, Druggist and Coal Master. *Clarke & Co.*, Lincoln's Inn Fields; *Higgetbottom & Co.*, Ashton-under-Lyne. July 14.
- Stedwell, John, Richmond, Surrey, Butcher. *Clark*, Off. Ass.; *Cross*, Surrey Street, Strand. July 17.
- Sutton, Joseph, Liverpool, Broker. *Vincent & Co.*, Temple; *Harper & Co.*, Whitchurch, Salop. July 17.
- Tucker, Samuel, Exeter, Builder. *Keddell & Co.*, Feauchurch Street; *Stagdon*, Exeter. June 26.
- Tempest, Abraham, Clayton-Heights, Bradford, York, Worsted Spinner and Manufacturer. *Lawrence & Co.*, Old Fish Street, Doctors' Commons; *Morris & Co.*, Bradford. June 30.
- Thomas, Harwood, Shrewsbury, Salop, Scrivener. *Weeks & Co.*, Cook's Court, Lincoln's Inn; *Feere*, Shrewsbury. July 3.
- Tooke, William Weightman, Ashton-under-Lyne, Lancaster, Mercer and Draper. *Sale & Co.*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. July 3.
- Thompson, Joseph, Aston, nigh Birmingham, Coal Dealer. *Chaplin*, Gray's Inn Square; *Ingleby & Co.*, Birmingham. July 7.
- Turk, Edward, Birmingham, Factor and General Dealer. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. July 10.
- Wood, Josiah Swann, Liverpool, Wine and Spirit Merchant, and Ship Store Dealer. *Crump & Co.*, Liverpool; *Battye & Co.*, Chancery Lane. June 23.
- Wilkins, Daniel Spencer, Gloucester, Dealer in Wines, Spirits, and Beer. *White & Co.*, Bedford Row; *Washbourn*, Gloucester. June 26.
- Williamson, Joseph, Boston, Lincoln, Carpenter and Builder. *Hollway & Co.*, Boston. June 26.
- Ward, William, Saffron Walden, Essex, Carpenter and Builder. *Walters & Co.*, Basinghall Street; *Thursgood*, Saffron Walden. July 3.
- Wright, Thomas, London, Coffin Furniture Dealer. *Turquand*, Off. Ass.; *Underhill*, Birmingham; *Parke*, St. Paul's Church Yard. July 7.
- Warden, John Ewan, and Vincent Wanostrocht, Liverpool, Merchants. *Norris & Co.*, Bartlett's Buildings, Holborn; Messrs. *Norris*, Liverpool. July 7.
- Williams, Robert, Llanrwst, Denbigh, Druggist. *Norris & Co.*, Bartlett's Buildings, Holborn; Messrs. *Norris*, Liverpool. July 10.
- Walker, Eneas, Wellhouse, Netherlong, Almondsbury, York, Merchant, Clothier and Scribbling Miller. *Jaques & Co.*, Ely Place; *Lake & Co.*, Basinghall Street; *Battye & Co.*, Huddersfield. July 17.
- Wycherley, Thomas, Wem, Salop, Commission Agent. *Pownall & Co.*, Staple Inn; *Walmley*, Wem. July 17.

PRICES OF STOCKS.

Tuesday, July 21, 1840.

Bank Stock, div. 7 per Cent.	173½ a ½
3 per Cent. Reduced	92 a ½ a 2 a ½
3 per Cent. Consols Annuities	91½ a ½
3½ per Cent. Annuities, 1818	99
3 per Cent. Annuities, 1726	89
3½ per Cent. Reduced Annuities	100 a ½
New 3½ per Cent. Annuities	99½ a ½ a 2 a ½
Long Annuities exp. 5th Jan. 1860	13½ a ½
Annuities for 30 years, exp. 5th Jan. 1860	13½
India Stock, div. 10½ per Cent.	254 a ½ a 5
Ditto Bonds, 3 per Cent.	2s. pm.
South Sea Stock, div. 3½ per Cent.	101½
South Sea Old Annuities, div. 3 per Cent.	90
3 per Cent. Consols for Acct. 27 Aug.	92 a ½ a 2
Excheq. Bills, 1000l. at 2½d.	28s. a 30s. a 27s. pm.
Ditto 500l.	28s. a 30s. a 27s. pm.
Ditto Small	28s. a 30s. a 27s. pm.

The Legal Observer;

==
SATURDAY, AUGUST 1, 1840.
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—“ Quod magis ad nos
Pertinet, et nescire malum est, Agitamus.

HORAT.

THE BANKRUPTCY COMMISSION.

THE spirit of law reform, which has been laid for some time, is now again abroad and stalking through the land, and we shall not be surprised that changes, as extensive as any that have ever been effected, will speedily follow. A grievance not remedied in time, only increases by being suffered to continue, and the demand for the remedy becomes tenfold stronger. This is peculiarly exemplified in the proposed reform of the Equity Courts. There was an unquestionable necessity for the appointment of additional Equity Judges ten years ago, yet Lord Lyndhurst, then Chancellor, could not prevail on the Legislature to grant him even one. In the present session, the House of Lords, without one dissenting voice, agrees to grant two, and this, although deferred for the present, is echoed almost unanimously in the House of Commons, and three or four more additional Judges are considered as likely to follow.* A few years ago, an attempt was made to bring under the notice of the Legislature the

removal of the Courts of Law from Westminster, but it totally failed. The subject is now to be brought forward by her Majesty's Solicitor General, with the concurrence, as it is understood, of the Lord Chancellor, and with every probability of success. Nothing is more certain than that it is now impossible to resist the demand for a reasonable reform of abuses for any length of time. The remedy may be deferred, but the grievance remains. The seed is sown, and remains silently increasing and making progress, and will force its way upon public attention. The same thing happens if an insufficient or improper remedy be applied. The grievance remains uncured, and it will sooner or later demand and receive attention. This is shown particularly in the recent alteration in Bankruptcy. The change made in the year 1832 was neither satisfactory to the profession nor the public. In some portion of it, more was done than was required: in others less. The almost complete removal of the jurisdiction from the Court of Chancery, the great tribunal of the laws of property, was inadvisable, and the Court of Review, set up in its place, has never obtained the public confidence. On the other hand, the powers of the Commissioners were not sufficiently extensive. Under these circumstances, we have awaited with considerable interest the publication of the Report of the Bank-

* In the evidence before the Lords' Committee on the Bill, his Honor the Vice Chancellor is asked—

“Do you think two additional Judges would be sufficient?—I think two would be sufficient at first.

“But you look forward to two as not being sufficient, except for a short time?—I do, indeed.

“Do you think four would be sufficient?—I think four would be more than necessary at first. I think the matter would be progressive. If two were appointed, I think in the course of time it would be found that there would be a great increase of business, and that three would be necessary, *and soon*.

“And then four?—Yes.

“Is there to be any limit drawn to that? At what intervals are we to be adding Judges? If we add two now for instance, when do you

expect we should be obliged to add a third, and when a fourth, and when a sixth? I cannot answer that question. It depends upon experiment; but my opinion is, that the business of the Court would be found to increase, as it unquestionably has done within the last twenty-seven years. I mean since the Vice Chancellor's office was first appointed.”—*Min. Ev. pp. 314.*

Much of the other evidence is to the same effect.

ruptcy and Insolvency Commissioners, whose appointment we have already noticed.^b

The Commissioners, we understand, have now completed their Report, and it will probably be laid before Parliament and printed, so that it may be circulated during the recess, which is absolutely necessary if its recommendations are to be carried into effect in the next session of Parliament. When the composition of the Commission is considered, consisting as it does of the Chief Judge of the Court of Review, (Mr. Justice *Erskine*) some of the most able of the present Commissioners, several eminent bankers and merchants, and other persons well qualified to form an opinion on the matters referred to them, their recommendations, it must be admitted, are entitled to great attention. They are, however, many of them of great importance, and deserve to be well weighed before being adopted.

Without pretending to any very accurate information as to the forthcoming report, we may mention the main features of their proposed plan, as we have heard them rumoured. They comprise, in the first place, the amalgamation of the bankruptcy and insolvency jurisdictions into one Court, to be called either the Bankruptcy Court or the Court of Commerce; the abolition of the Court of Review, and the employment of all the judges and commissioners, both of bankruptcy and insolvency, as commissioners of the new court. Of course this can only be done with the assent of the existing judges and commissioners, if other duties are imposed on them than they have at present. If they decline, then they are to be suffered either to die off, or receive compensation. In lieu of the Court of Review, we understand that a Court of London Commissioners is to be formed, composed of three or more, with an appeal to the Court of Chancery. It is also proposed to abolish the present system of country commissioners, and to establish in their place a fixed number of local commissioners, who shall be barristers of a certain standing, and to whom certain other duties connected with the provincial administration of justice shall be committed. Further, we understand that the commissioners strongly recommend the abolition of imprisonment for debt on execution or final process, unless fraud can be established against the debtor; but there is to be a great extension of the operation of the bankrupt laws, so that every debtor, whether a trader or not, is to be brought within its reach. We do not pledge our-

selves for the accuracy of all the details of the scheme, but we believe that we are correct in its main points.

It will be seen that the commissioners thus propose very extensive changes, which, as we have said, will require mature deliberation before being adopted.

PRACTICAL POINTS OF GENERAL INTEREST.

CONSTRUCTION OF 2 & 3 VICT. c. 29.

By 2 & 3 Vict. c. 29, it was enacted that all contracts, dealings, and transactions, by and with any bankrupt really and *bona fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bona fide* executed or levied before the date and issuing of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such contract, dealing or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed; provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt, being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt by way of such fraudulent preference.

In a late case the execution was levied on the 6th July, on the 19th of the same month the 2 & 3 Vict. c. 29, came into operation, and a few days afterwards a fiat issued upon an act of bankruptcy committed before the levy. It was contended, on the part of the assignees, that they had a vested right at the time the act passed, and that when the fiat issued, the retroaction of the bankrupt laws placed them in the same situation as if they had been chosen assignees when the cause of action accrued. By the retroaction of the bankrupt law, the sheriff who has taken in execution the goods of a bankrupt, has been held liable in trover, under circumstances which would otherwise have excused him. *Potter v. Starkie*, 4 M. & Sel. 269; *Garland v. Carlisle*, 4 Scott, 587; *Balme v. Hutton*, 1 C. & M. 262. The Courts have admitted the hardship upon the sheriff, but still they felt bound to give effect to the retrospective operation of that law. *Price v. Helyar*, 4 Bing. 597. *Parke*, B., was of a different opinion.—The question arises upon the construction of 2 & 3 Vict. c. 29. The words of the act are very general, and if taken according to their grammatical construction, will apply to all contracts, whether by-gone or future. Now the sound rule of

^b 19 L. O. 99, 353.

construction with respect to acts of parliament, is to read them in the ordinary and usual grammatical sense, giving full effect to their provisions, unless such mode of construction leads to manifest inconvenience, or is repugnant to the evident intention of the legislature. If, in the present case, such construction would have the effect of defeating any antecedent vested right, then we ought to construe the act so as to support, not to defeat it. Upon the principle of *Gilmore v. Shuter*, 2 Lev. 227; S. C. 1 Vent. 330; 2 Sir T. Jones, 108, if a fiat had issued, and assignees had been appointed before the act passed, they would have had, at the time of the seizure, a vested right to the property of the bankrupt, and it would have been unjust to consider the act as defeating that right, and depriving them of any part of the property. Even if the assignees had not been appointed when the act passed, provided the fiat issued before the date of the act, we should, in that case, also construe it so as not to defeat the right of the assignees. But with respect to a fiat issued after the date of the act, we think there is no injustice in saying that the assignees must take the property subject to the new law. *Alderon, B.*—I am of the same opinion. At the time the act passed an act of bankruptcy had been committed, upon which it was possible that a fiat might, at some future period, be taken out; but no fiat had then issued; a *bond fide* execution is put in by a creditor. Under the old law he would have had the property to satisfy his debt, subject to its being divested in case a fiat issued within two months overriding his execution. In the opinion of the legislature that was a very unjust position, and they enacted, that no fiat should have the effect of overriding any future execution under such circumstances. It seems to me, that by thus construing the act, we give it a prospective, not a retrospective, effect—the party who has acquired a right is no longer subject to have it divested. *Edwards v. Lawley*, 8 Dowl. 234.

LAW AND PRACTICE OF EJECTMENT.—No. II.

ACTIONS FOR MESNE PROFITS.

By the 1 Geo. 4, c. 87, landlords were enabled in actions of ejectment to recover the mesne profits accruing from the day of the determination of the tenancy to the day of the trial, or some preceding day. But an action must be brought for the subsequent profits to the time of possession, and it being optional with the landlord to include the partial recovery of mesne profits in the action of ejectment, it is usual to bring a separate action for the whole of the mesne profits, more especially as it is frequently easier to ascertain the actual profits after possession has been obtained. Besides recovering the profits, the costs of the action

in ejectment may also be recovered as consequential damage. *Doe v. Huddart*, 2 Cr. M. & R.; 4 Dowl. 437.

According to the old state of the law, although in ejectment the plaintiff, if he prevailed, was to recover damages, yet the damage which he had sustained by being kept out of the mesne profits were not recoverable in an action of ejectment, because such action was never laid with a *continuando*, and therefore comprehended only the damages sustained in the particular act of ouster complained of. The action is brought by a nominal plaintiff against a nominal defendant, for a supposed ouster, and for mere nominal damages. Anciently damages only were recoverable by it, and not the term, which was the subject of a real action. Now, the term is only sought for, and not the damages. For a satisfaction in damages, therefore, a subsequent action is to be brought, which is in *form* an action of trespass, *vi et armis*. It may be brought by the lessor of the plaintiff in his own name, or in the name of the nominal lessee; but in either shape it is equally *his* action, for it is not in any manner affected by the fiction in the ejectment. And it may be brought in the name of the nominal lessee, as well where the judgment is by default as where it is upon a verdict, for there is no distinction between a judgment by default and upon verdict; in the one the right of the plaintiff is tried and determined against the defendant; in the other it is confessed. 3 Wils. 128; 2 Burr. 688; 3 T. R. 17, 547; Salk. 260; Skin. 247.

It is contended in the last edition of Bacon's Abridgment, that the plaintiff may recover the whole mesne profits in the ejectment, as appears from the 16 & 17 Car. 2, which enacts that in case judgment be affirmed on writ of error, the Court may award a writ of inquiry, as well of the mesne profits as of the damages by any waste committed after the first judgment. But it is admitted that the Court will take notice that the proceedings in ejectment are merely fictitious, and only to enable the plaintiff to get possession; and that it is never usual to recover more than small damages for the ouster, without any consideration had of the mesne profits. It is said, however, that the Courts will take that into consideration, otherwise the lessor would not be entitled to recover at all for the time laid in the declaration, since, by his own shewing, his lessee, and not himself, was entitled to the action. But if the plaintiff were, upon the judgment in the

ejectment being affirmed in error, to have a writ of inquiry, it would probably, if rightly pleaded, prevent him from recovering anything in a subsequent action of trespass; and therefore, if the demise were laid any time back, it would be advisable for the plaintiff in ejectment to take (as he may) judgment for his costs on the writ of error, without having any writ of inquiry. Bull. Ni. Pri. 88. In *Traherne v. Greshingham*, Barnes, 87, it is said by the Court that the actions for mesne profits (which are grown very fashionable) tend to create double expense; that the plaintiff should be ready at the trial of the ejectment to prove his damages, which may be recovered in that action, without bringing a second action for mesne profits. But it was formerly thought that antecedent profits were not recoverable at law, and, therefore, it was usual for the plaintiff to go into equity for an account of the mesne profits. 1 Vern, 105; 3 Wils. 118; 2 Burr. 688; 3 T. R. 17, 547.

If the action be brought in the name of the nominal plaintiff, the Court, upon application, will stay the suit till security be given for answering the costs; and if such a plaintiff release the action, his release will be set aside as a contempt of Court. Skin. 247; Salk. 260.

It was formerly holden, that if the action for mesne profits were brought in the name of the lessor of the plaintiff, or after a judgment by default, the defendant in such action was at liberty to controvert the plaintiff's title; the lessor of the plaintiff in the one case, and the tenant who had never appeared in the other case, being no parties to the record, and therefore, no estoppel arising either against, or in favour of either of them. But it is now settled, that after a recovery in ejectment, the tenant is estopped from controverting the title in a subsequent action for mesne profits; provided the plaintiff proceed only for those profits from the time of the ouster complained of in the ejectment; but, if he proceed for antecedent profits, he must prove his title to the premises whence they arose, to shew his right to receive them. 2 Str. 960; Barnes 472; 2 Burr. 688.

Hence it should seem, that in order to prove the plaintiff's title in an action for the mesne profits, it is only necessary to produce the judgment in ejectment; and so is the practice, where the judgment is after verdict: but after judgment by default the practice is different, — then it is usual not only to produce the judgment, but also to prove a writ of possession executed. This

latter proof, however, does not seem to be necessary; for if the tenant be concluded by the judgment in ejectment from controverting the plaintiff's title, he is, consequently, concluded from controverting his possession, because possession is part of his title. 2 Burr. 667. If, however, the plaintiff have been let into possession by the defendant, it will not be necessary to prove the execution of the writ of possession. 4 Esp. 67.

But if this action be brought against a precedent occupier, the judgment in ejectment is no evidence against him; and, therefore, in such case it is necessary for the plaintiff to prove his title, and also an actual entry for trespass; being a possessory action cannot be maintained without it. But it may admit of doubt what proof of an actual entry will be sufficient. It has been said that the plaintiff will be entitled to recover the mesne profits only from the time he can prove himself to have been in actual possession, and therefore, if a man make his will and die, the devisee will not be entitled to the profits till he has made an actual entry. Others have holden, that when once he has made an actual entry, that will have relation to the time his title accrued, so as to entitle him to recover the mesne profits from that time; and they rely on the case in 1 Sid. 239, which was trespass brought for the mesne profits *devant le lease*, and nothing said in the case about proving an actual entry antecedent to it. They say, too, that if the law were not so, the Courts would never have suffered plaintiffs in ejectments to lay their demises back in the manner they now do, and by that means entitle themselves to profits they would not otherwise be entitled to. However, supposing a subsequent entry has relation to the time the plaintiff's title accrued, yet certainly the defendant may plead the statute of limitations, and by that means protect himself from all but the last six years. Barnes, 456; Bull. N. P. 87.

In this action the plaintiff must prove the value of the mesne profits, for the judgment in ejectment does not prove anything as to that. In estimating it, however, the jury are not confined to the mere rent of the premises; they may give *extra* damages, and the costs in ejectment are recoverable whether the judgment be by default against the casual ejector, or upon a verdict against the tenant or landlord, and are therefore usually declared for as damages in the action for mesne profits. 3 Wils. 121; 2 T. R. 261; 3 T. R. 547.

The defendant may plead the statute of limitations, namely, *not guilty, within six years* before the commencement of the suit, and thereby protect himself from all but that time, should the plaintiff declare for a longer period.

If the plaintiff recover less than forty shillings, and the judge do not certify that the title came in question, the plaintiff is entitled to no more costs than damages; and this is the case whether the action is brought in the name of the lessor of the plaintiff, or in that of the nominal lessee. 6 T. R. 593.

Upon the general issue in this action, not guilty, evidence that the plaintiff had accepted the rent of the premises for the time in dispute, and had agreed to waive the costs of the ejectment, is not admissible. 4 Taunt. 459.

The defendant in this action must be the person in actual possession and trespassing; so that a tenant, whose under-tenant retains the possession after the term, would seem not to be liable. 4 Taunt. 720.

If in an ejectment there be a verdict for the plaintiff, and the defendant bring a writ of error, and enter into a recognizance to pay costs in case of nonsuit, &c. pursuant to 16 & 17 C. 2, c. 8, and he be nonsuited, &c. the defendant in error need not bring a *scire facias*, or debt on the recognizance, but may sue out an *elegit* or writ of inquiry, to recover the mesne profits since the first judgment in ejectment. 2 Crompt. Pr. 225.

A plaintiff may, if he pleases, waive the trespass, and recover the mesne profits in an action for use and occupation. Doug. 584; Cowp. 243. But in the action for use and occupation, he cannot recover the profits any farther than to the time of the demise in the ejectment; for this action does not spring out of the ejectment as the action of trespass does, but, when applied to the same thing, is totally inconsistent with it, this being founded on a contract, that on a tort; in the one, the plaintiff says the defendant is his tenant, and therefore must pay him rent; in the other, the defendant says he is no longer his tenant, and therefore must deliver him up the possession. 1 T. R. 386.

Where the tenant holds over after the expiration of the notice to quit, the landlord may recover double the yearly value under the 4 Geo. 2, c. 28. A joint action for mesne profits may be maintained by several lessors of the plaintiff in ejectment after recovery in such action, though the demises were separate. 5 M. & S. 64.

An action cannot be maintained against executors or administrators for mesne profits during the testator or intestate's life, it being an action of trespass; nor will equity interfere. 6 Ves. 73. The action being for a tortious occupation, the defendant could not formerly pay money into court. 2 Wils. 115. But now under 3 & 4 W. 4, c. 42, s. 21, the defendant, with leave of the Court or a Judge, may pay money into Court. The plaintiff will be allowed to give evidence of any injury done to the premises in consequence of the defendant's misconduct, provided such fact be specially alleged in the declaration. Adams, p. 391.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. VI.

ACTIONS FOR GAMING.—COSTS.

3 Vict. c. 5.

An Act to repeal so much of an Act passed in the thirteenth year of the reign of his Majesty King George the Second, intituled "An Act to restrain and prevent the excessive Increase of Horse Races;" and for amending an Act made in the last Session of Parliament, intituled "An Act for the more effectual preventing of excessive and deceitful Gaming," as relates to the subject of Horse Racing.

[23d March 1840]

13 G. 2, c. 19.—*So much of recited act as relates to horse racing repealed.*—Whereas an act was passed in the thirteenth year of the reign of his Majesty King George the Second, intituled "An Act to restrain and prevent the excessive increase of Horse Races; and for amending an Act made in the last Session of Parliament, intituled 'An Act for the more effectual preventing of excessive and deceitful Gaming:—' And whereas doubts have arisen as to the meaning of certain clauses in the said act, relating to the subject of horse racing; and whereas several persons, not intending to offend against the provisions of the said act, have been subjected to vexatious proceedings at law, and it is expedient to repeal so much of the said act as relates to the subject of horse racing: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said act made and passed in the thirteenth year of the reign of his said late Majesty King George the Second as relates to the subject of horse racing be and the same is hereby repealed.

2. *Persons sued for penalties under recited act may apply to the Court from which any suit has issued for an order to discontinue it; and thereupon the Court may make such order.—As to actions commenced since 1st March, 1840.—Not to enable persons to recover back mone*

paid.—And be it enacted, that immediately after the passing of this act it shall be lawful for any person against whom any original writ, writ of summons, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this act, for the recovery of any forfeiture or pecuniary penalty incurred under the said act made and passed in the thirteenth year of his said late Majesty King George the Second, to apply to the Court in which such original writ, writ of summons, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, if such Court shall be sitting, or if such Court shall not be sitting to any Judge of either of the Superior Courts at Westminster, for an order that such original writ, writ of summons, suit, action, bill, plaint, or information shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court or Judge, as the case may be, is hereby authorized and required, upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application to make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued: Provided always, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced subsequently to the first day of March, one thousand eight hundred and forty, it shall be lawful for such Court or Judge as aforesaid to make such order for discontinuing the same, without payment of any costs; and in every such case, on the making of such order, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued: Provided always, that nothing herein contained shall be deemed or taken to enable any person to recover back any money paid before the passing of this act, in pursuance of any judgment duly obtained under the provisions of the said last-recited act.

3. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

The 13 Geo. 3, c. 19, enacts, that no plate under the value of 50*l.*, shall be run for by any horse, &c., under a penalty of 200*l.*, and that no person shall run any match between any horse, &c. for any sum of money, plate, &c., unless at Newmarket or Black Hambleton; or such sum &c. be 50*l.* or upwards. No action can be maintained to recover a wager on a race for a smaller stake than 50*l.* *Johnson v. Bann*, 4 T. R. 1; and see *Mc Allister v. Huden*, 2 Camp. 438.

NEW BILLS IN PARLIAMENT.

IMPRISONMENT FOR DEBT AMENDMENT ACT.

A bill for further amending the act for abolishing arrest on mesne process was brought in by the Lord Chancellor on the 23 July. It recites part of the 1 & 2 Vict. c. 110, and proposes to extend the provisions of that act as to the property of judgment debtors, as follows:

That the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares; and whenever any such judgment debtor shall have any estate, right, title or interest, vested or contingent, in possession, remainder, or reversion, in, to, or out of any such stock, funds, annuities, or shares as aforesaid, which now are or shall hereafter be standing in the name of the accountant general of the Court of Chancery, or the accountant general of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the accountant general of the Court of Chancery, or the accountant general of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the governor and company of the bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

REMOVAL OF THE COURTS FROM WESTMINSTER.

THE petition of the Incorporated Law Society for the removal of the Courts from Westminster, was presented by the Solicitor General on Monday last. Petitions were also presented with the same object

from the attorneys of Halifax, Brighton, Derby, and the county of Oxford.

The Solicitor General gave notice of his intention to move on *Tuesday*, the 4th *August*, for "a Committee to consider of the expediency of erecting a building in the neighbourhood of the Inns of Court, for the Sitting of the Courts of Law and Equity, in lieu of the present Courts adjoining to Westminster Hall, with a view to the more speedy, convenient, and effectual administration of justice."

We understand that the facts which have been laid before the Solicitor General have convinced him that the measure is a proper one, and that the most effectual way of bringing the case satisfactorily before Parliament, will be by the appointment of a Select Committee, before whom evidence may be adduced. If it can be shewn in the terms of the motion that "the administration of justice will be rendered more speedy, convenient, and effectual," by the proposed removal, we feel assured that such of the Judges and leading Counsel as are now opposed to it, will be induced to give way.


The following is a list of the petitions which have been presented, and those which are ready to be presented.

Petitions presented to the House of Commons for the Removal of the Courts from Westminster to the Neighbourhood of the Inns of Court.

From the Attorneys and Solicitors of the	
Metropolis,	Worcester,
Incorporated Law	Reading,
Society,	Rugby,
North and South	Huddersfield,
Shields,	Leeds,
Stamford,	Kent,
Nottingham,	Oxford,
Isle of Wight,	Derby,
Warrington,	Halifax,
Burton-on-Trent,	Brighton,
Somersetshire,	Shrewsbury,
Cheltenham,	Leicester,
Lymington,	Wakefield,

Petitions for the Removal of the Court *not yet presented*, from the Attorneys and Solicitors of

Portsmouth,	Birmingham,
Plymouth,	Liverpool,
Devonport,	Oswestry,
Kidderminster,	Preston,
Norwich,	

 In addition to the above, there is a petition signed by 130 Equity Draughtsmen.

We trust the proper means will be used to procure the attendance of the friends of the measure in support of the Solicitor General.

RULES AND REGULATIONS RESPECTING THE PUBLIC RECORDS.

RULES and regulations made by the Master of the Rolls for the management of the Public Record Office, for the admission of persons to the use of the records, calendars, and indexes, and the amount of fees to be paid for the same, and for copies of records, pursuant to the statute made and passed in the parliament held in the first and second years of the reign of her present Majesty, intituled, "An act for keeping safely the Public Records," the same to be observed and paid in the said public office, and in the record offices of the Tower, Rolls Chapel, and Chapter House, and the repositories of the records of the King's Bench at the Rolls House, the Common Pleas in the Carlton Ride, and the repository No. 3, Whitehall Yard, and of the Exchequer of Pleas in the said repository, No. 3, Whitehall Yard, and all such other record offices and repositories as shall hereafter be brought under the regulations of the said act by the said Master of the Rolls.

1. The public office, and all the above mentioned offices and repositories are to be opened daily from ten till four, excepting on Sundays, and the following holidays, viz.:

May 24th, Her Majesty's birthday.
June 28th, H r Majesty's Coronation.
Good Friday and Saturday following,
Easter Monday and Tuesday.
Whit Monday and Whit Tuesday.
Christmas day to New Year's day inclusive.

And such days as may be appointed for public fasts or thanksgivings.

2. A book is to be kept at each of the said record offices and repositories, in which each party requiring the use of records is to enter the following particulars, viz.: date, name of party making the application, reference to the record, and the service which he requires, viz: inspection, extract, copy, or attendance with a record.

3. Upon the inspection of a record, the party may take notes, extracts, or copies therefrom, in pencil, as he may think fit.

4. Copies are to be made and delivered according to priority of application, or as near thereto as the nature of the copy will admit of, except in special cases, for particular reasons assigned.

5. No assistant keeper, clerk, or other officer, is to act as a record *solicitor*, or as record agent, for individuals, otherwise than in the discharge of his official duties.

6. No stranger is to be allowed to have any use of a record, excepting in the presence and under the inspection of an assistant keeper or other officer of the establishment, and in all cases where the record may be liable to be injured or damaged, the assistant keeper is to give such directions for preventing such injury or damage as the case may require.

7. Except the fees under mentioned, no fee nor any gratuity or reward is to be received by any officer of the establishment from any person consulting or using the records; save only, that if any party should desire to obtain information respecting any records in the Rolls Chapel, from the indexes heretofore belonging to the late Mr. Kipling, the assistant keeper of the records at the Rolls Chapel shall (until further arrangements can be made for the relief of the public) be at liberty to receive, for the parties who may be entitled thereto, such fees as have been heretofore paid for the use of such indexes.

Table of Fees to be paid for the use of the records, calendars, and indexes, and for copies of records, at the above-mentioned record-offices and repositories.

For a general search in all the calendars or indexes of each office 0 1 0

For inspection of Records:

[The fee to cover all the use which may be made of the record for the current week.]

Each separate roll of Chancery, or other roll of consecutive enrolments, excepting the specification rolls at the Rolls Chapel 0 1 0

The rolls, files, or bundles of proceedings of courts of common law each year (that is to say, the records of the four terms to be covered by the fee) 0 1 0

Rolls of ministers' and receivers' accounts, court rolls, surveys, extents, terriers, deeds, and miscellaneous documents, classed topographically under one head, whether of parish, town, vill, manor, lordship, borough, city, deanery, archdeaconry, or diocese, each set or series 0 5 0

Single records of the last-mentioned description 0 1 0

Specifications at the rolls chapel, each, and which is to include the fee for search 0 1 0

Post-mortem inquisitions, and other inquisitions upon the file, returns to commissions, pedes, chirographs, and concords of fines 0 1 0

General inspection of the last-mentioned documents as to any family or place 0 5 0

Rolls of parliament or other parliamentary proceedings, each parliament 0 1 0

Proceedings in courts of equity, each, suit 0 1 0

Every bound book, portfolio, or volume, without reference to the nature or number of the documents which it may contain 0 1 0

All other documents not before enumerated, each 0 1 0

[If the number *bona fide* required for prosecuting any search relating to any family, place, or sin-

gle object of inquiry, shall exceed five, then it shall be in the discretion of the assistant keeper to remit the fees for all above that number.]

For copies of records:

Under three folios of 90 words 0 1 6
Above three folios, per folio 0 0 6

[The fee for inspection of a record to be deducted, if a copy be taken from the record produced.]

For examination and authentication:

Under three folios if required 0 1 6
Above three folios, per folio, if required 0 0 6

For enrolment of any specification per folio 0 0 6

For annexing drawings or maps to any enrolment or specification 0 1 0

For attendance, at the bar of the House of Lords, or elsewhere, for the purpose of producing records (including the production thereof), or for giving evidence upon the records, *per diem* 2 2 0

Attending the Master of the Rolls on a *vacatur* 0 5 0

(Signed)

Langdale, M. R.

Rolls House, 17 July, 1840.

LEWES MIDSUMMER SESSIONS.

VOTE OF THANKS TO WM. SEYMOUR, ESQ.

We have procured an extract from "The Brighton Gazette," of the 2d July, in which a Report appears of a vote of thanks passed to *Wm. Seymour, Esq.* of Brighton, on his retiring from the bench of magistrates. Mr. Seymour practised as a Solicitor, in London, for upwards of thirty years, and held a very eminent rank in his profession. He was one of the members of the Committee of Management of the Law Institution on its original formation. He retired from Practice in the year 1829, and was soon after appointed one of the Magistrates of the county of Sussex.

"The Midsummer sessions for the eastern division of the county commenced at the county hall, Lewes, on Monday. After the commission had been opened in the Crown Court, the magistrates adjourned to the grand jury room, for the transaction of the county business. The Earl of Chichester (Chairman of the Sessions) presided; and among the magistrates present were Sir C. M. Lamb, Bart., Sir M. P. Miclethwaite, T. Partington, Esq., R. W. Blencowe, Esq., R. Gear, Esq., H. W. Blaauw, Esq., Captain Shifner, R. Trotter, Esq., A. Donovan, Esq., G. C. Courthope,

Esq., R. Streatfield, Esq., Captain Willard, I. N. Wigney, Esq., T. Richardson, Esq., Major Paine, Lieutenant-Colonel Ellwood, T. W. Scott, Esq., R. Pedder, Esq., J. Hoper, Esq., Major Allen, W. Haslewood, Esq., J. Ellman, Esq., P. W. Hick, Esq., R. Heavside, Esq., and F. H. Pedder, Esq.

"Captain *Shiffner* then rose to move that the thanks of the Court be given to Mr. Seymour for his conduct during the time he had acted as a magistrate. There were some occasions when he had differed from Mr. Seymour; but at the same time he could not but express the sense which he entertained of Mr. Seymour's services and unwearied attention, and also of his arrangement of business to be brought under the consideration of the Court. Formerly the magistrates had felt great inconvenience in consequence of not knowing till they came into Court what business was to be transacted; but this inconvenience was removed by an arrangement introduced by Mr. Seymour, who had also rendered great service by presiding as chairman at the quarter sessions. Captain *Shiffner* then moved the following resolution:—That the thanks of this Court be offered to Mr. Seymour, for the zeal and ability with which he discharged the duties of a magistrate of this division of the county, and especially for the indefatigable attention which he has so constantly and beneficially applied to our house of correction."

"Mr. *Gear* had much pleasure in seconding the motion. It had been his good fortune to act in conjunction with Mr. Seymour as a visiting magistrate, and there could be only one opinion of the value of Mr. Seymour's services in that capacity. His great object was to promote public justice, and to promote it in connexion with the improvement of the persons who had offended the laws. He did this by the measure which, on his proposition, was carried, for making separate cells; and he (Mr. *Gear*) thought that there was no one measure which the magistrates had adopted so much to the advantage of the public as that. But for this, they would have had much more crime; and the country must of course have been put to much greater expenses. In an economical point of view, Mr. Seymour's services had been invaluable; but there was a principle involved in the measure, which was of much greater consequence,—the principle of morality. The separation of the prisoners had certainly, more than anything else, contributed to the improvement of their morals; and he thought it would tend to the happiness of Mr. Seymour, in his last moments, to think that he had effected so much good, not to the public only, but also to the unfortunate class of persons whom they were called upon to punish. He (Mr. *Gear*) seconded the motion with much pleasure.

"*Chairman*.—I am sure that in putting this resolution to the Court, they scarcely expect that I could do so in silence, when it must be known to many of the magistrates present how many years I have been, not only a brother magistrate of Mr. Seymour, but on the most

intimate and confidential terms with him. I have long felt, and indeed have ever felt since I have had the honour of being a magistrate in this county, and had the pleasure of knowing Mr. Seymour, that he was one of the most active and useful magistrates. Captain *Shiffner* and Mr. *Gear* have already alluded to his public services, and there are two of those services of which I am not so competent to speak as others,—I mean his conduct on the bench and in Court, because the success and ability with which he discharged the duties of these functions I can only know by report. But with regard to the value of his services here, and still more as visiting justice of the Lewes house of correction, I can, without undue partiality, say that I think the county is not indebted to any individual magistrate more than to Mr. Seymour. I perfectly agree with Mr. *Gear*, that the great improvements in the house of correction are mainly owing to the zeal and attention of Mr. Seymour, not only in proposing the new arrangements, but for the indefatigable manner in which he watched the carrying out of that measure; and when the Court remember that that has been during a considerable number of years, and up to the moment when Mr. Seymour felt it incumbent on him, from his increasing years, to retire from the office of magistrate, I think we must admit that he has shewn a degree of persevering diligence in the cause of prison discipline, and the performance of the duties of a magistrate, which is scarcely ever to be met with. (Hear, hear.) With regard to the success of his efforts, and the efforts of those who have acted with him in promoting the improvements of the house of correction at Lewes, I do believe that at the present moment, if it were not for the inconvenience of the prison, owing to its unfortunate construction, it would be the best prison in the kingdom. If the constant attention of the magistrates to the most minute concerns of the prison and to the conduct of the officers,—if a constant attention to the wants of the officers and the prisoners,—if these be important and valuable services for us to render to the county, then I am sure that Mr. Seymour has set us a most remarkable example in those duties; for no man has been more diligent, more attentive, and more successful than he has been. I need hardly say that I have great pleasure in reading this resolution to the Court.

"His Lordship then read the above resolution, which was put and carried unanimously; and on the motion of Captain *Shiffner*, the noble Chairman was requested to communicate it to Mr. Seymour."

THE STUDENT'S CORNER.

WILL OF LEASEHOLDS.

A TESTATOR bequeathed to his only brother, his executors, administrators, and assigns, a small leasehold property, but the brother died intestate before testator, leaving a wife and

family. The testator then died without republishing his will, but left no family,—he left a sister's son also, to whom he gave nothing. These different events happened previous to the late will act passing. Did the bequest become lapsed? if so, would the property belong to the children of the brother, and the son of the sister of testator, jointly? Or would it belong to the representative of the brother alone on letters of administration being taken out, the same being given to him, his executors, administrators and assigns,—and who should take out such administration, his widow being living?

I presume, the bequest became lapsed, and consequently, divisible between the children of the brother, and the son of the sister of testator. I believe it makes no difference, even if it be expressed to a person, his executors, administrators and assigns, as they would take (if it did not become lapsed,) without any such expression.—See 1 P. Wms. 83; 4 Ves. 435; 3 Bro. C. C. 128, 142, 143.

A SUBSCRIBER.

LANDLORD AND TENANT.—CONSTRUCTION OF TENANCY.

A memorandum of agreement is entered into on the following terms and conditions:—*A.* agrees to let, and *B.* to take certain unfurnished apartments in *A.*'s dwelling house, by the description therein contained, "at and after the yearly rent of twenty pounds, payable quarterly, and it is agreed by and between the parties hereto, that, three month's notice shall be deemed good and sufficient notice to quit." (Signed by the parties.)

A note is subscribed in the handwriting of one of the parties, but not signed by either, as follows: "Rent to commence from Lady Day, 1840."

The question is, what notice can *B.* demand to determine the tenancy? or rather would it be deemed a yearly tenancy, requiring six months' notice to quit, such notice to expire at the determination of the current year, or would three months' notice be sufficient? and in that case, should or should not the notice expire at the end of the current year?

I find two cases, one of which states that a general letting at a yearly rent, makes a yearly tenancy, though the rent is received at shorter periods, and any quarter's notice to quit is agreed upon: *R. v. Hertsmanceaux*, 7 B. & C. 551; the second states, that a tenancy determinable at a quarter's notice, without more, is a quarterly tenancy. *Kemp v. Derriit*, 3 Camp. 519.

STUDIOSUS.

THE EQUITY JUDGES BILL.

THIS Bill, we regret to say, was withdrawn on Thursday for the present Session, thus justifying our own gloomy anticipations. It would have been impossible to have car-

ried through an *opposed* bill in the present advanced period of the Session, and a strenuous opposition to it was threatened by Sir Edward Sugden. As we have already had occasion to remark in this Number, the longer the remedy for an admitted grievance is postponed, the more extensive must that remedy be, and thus will it be with Chancery Reform. The mere appointment of new Judges will not be sufficient next year; it must at least be accompanied by a thorough reform of all the offices connected with the Court. We shall advert to this subject more at length in our next Number.

SELECTIONS FROM CORRESPONDENCE.

EQUITY OF REDEMPTION.

In Fonblanque on Equity, 5th edit. 2d vol. p. 268, in note, it is stated, with reference to an equity of redemption, that the right to redeem is not confined to the mortgagor, his heirs, executors, assignees, or subsequent incumbrancers, but extends to all persons claiming any interest whatever in the premises as against the mortgagor; but the cases cited in support of the doctrine laid down are all cases in which deeds of conveyance, or some actual or attempted transfer, of an estate had been executed by the mortgagor to the party seeking the redemption. Would a purchaser of the equity of redemption of a leasehold estate, who has a mere contract from the mortgagor, be entitled to give the mortgagee six month's notice of his intention to pay off the incumbrance, and at the expiration of that period, upon tendering principal and interest, to require a transfer to himself of the mortgagee's estate, although no legal conveyance of the equity of redemption should have been executed by the mortgagor?

It seems to me that, under the general rule of equity, that what has been contracted to be done shall be considered as actually done, he would be so entitled, but perhaps some other correspondent may be enabled to point out a case in which redemption has been decreed under similar circumstances. PAUL.

LEGAL EXAMINATION DISTINCTIONS.

With the remarks of an Articled Clerk, in the number of the 11th July I perfectly agree, and I think there will be found but few, who can "shew cause," why we are to be deprived of a benefit which is enjoyed by the students of every other profession. It has been said that all articled clerks have not equal advantages during their clerkship, some being in offices where but little time is allowed for private study; and others having masters, who so long as the business of the office is uninterrupted, care but little for the improvement of their pupils, who, at the expiration of their

clerkship, find that they have then to pass an examination for which they are totally unprepared.

Admitting this to be true, it must still be allowed, that in five years a young man (unless he is extremely negligent) has ample time to qualify himself to answer correctly any question in those branches of the law to which his study has been particularly directed, and I think that instead of two prizes only being given, if one were given in each class, and as the chance of obtaining the distinction is proportionably greater, so also will be the efforts made by those candidates desirous of proving themselves worthy of it. M. G. S.

ADMISSION IN BANKRUPTCY.

We think enough has been said about admissions in bankruptcy; but we may add from Mr. Bagley's Practice, the following practical directions:

"Let the attorney obtain a certificate of his admission in the Court of Queen's Bench &c. from the Master's Office, and take this with his own affidavit of being an attorney, and also of the date of his admission, and that he has taken out his annual certificate, to the office of the Court of Review. The affidavit must be sworn before the Court of Review if the attorney reside in London or within ten miles thereof, and if elsewhere, before a master in ordinary or extraordinary in chancery (R. H. 2 W. 4, 1 D. & C. 23.) The Court will then make an order for the admission of the attorney, upon which the registrar enrols his name in a book kept for that purpose. Pay for admission and enrolment 5s."

(Our correspondent will now perhaps understand what was meant by the allusion to his being a country solicitor. Ed.)

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—DE CONTUMACE CAPIENDO.

A writ de contumace capiendo having become ineffectual, in consequence of an application for a prohibition, which was refused, this Court ordered a new writ to be issued, being satisfied by affidavit that the party was in contempt.

This was an application for an order on the cursor to issue a new writ *de contumace capiendo* against a defendant in a suit in the Ecclesiastical Court, intitled, *The Queen on the prosecution of William Jolly and William Berridge v. William Baines*, which was instituted by the Churchwardens of the parish of St. Martin's, Leicester, against the defendant, for subtraction of church rates. A decree was pronounced against him in the Court of Arches for 2*l.* 5*s.* rates, and 12*s.* 3*d.* costs; and for nonpayment he was pronounced in contempt; and upon *significavit* from the Judge

of the Court of Arches a writ *de contumace capiendo* was issued against the defendant on the 6th of June, 1839, returnable on the 2d of November of that year, and it was duly enrolled in the Queen's Bench. Notice was then given by the defendant to the prosecutors, that application would be immediately made to the Court of Queen's Bench for a writ of prohibition, and such application was accordingly made on the 10th of June, 1839; but that Court did not adjudicate on the matter until the 11th of last June, when the defendant's application was refused.

Mr. Dixon, after stating the facts, said that nothing could be done on the writ pending the application for the prohibition, and it was useless after the return day had expired; and the course to be pursued was to issue a new writ, as was done in the case of *Rex v. Eyre*^a which was precisely in point. There a writ *de excommunicato capiendo*, issued out of Chancery, was enrolled in the King's Bench; but upon exceptions being taken to it, that Court made a rule on the prosecutor to shew cause why the delivery out of the writ of *capias* to the sheriff should not be stayed. Before an opportunity came of shewing cause, the return of the writ was out, and the prosecutor sued out another writ *e cancellaria*, and, to prevent the loss of that, desired that the defendant might at once take his exceptions to it by a motion to quash. The defendant accordingly took his exceptions, the first of which was, that the former writ being enrolled in B. R., the Chancellor could not issue a second writ; but by 5 Eliz. c. 23, such writ was to issue from *Banco Regis*. To that it was answered by the prosecutor that that act related only to the case when the first writ had actually issued, and the sheriff had returned *non est inventus*, when the court can fine him if they see occasion, and issue *capias*, *alias* and *pluries*. The Court held that the answer was right; if the first writ had been actually quashed, the prosecutor must have gone to the Chancellor for another. In the present case the writ was not quashed, but it was ineffectual after the return was out. There was another case equally in point, in which the former case is referred to. It is *The King on the prosecution of Blake v. Blake*,^b where the defendant was arrested by the sheriff's officer on a warrant granted upon a writ *de contumace capiendo*, issued out of Chancery, and being brought before a judge at chambers by writ of *habeas corpus*, he was discharged on the ground that the writ was irregular, not having twenty days to run between the teste and the return, as required by the 5th Eliz. c. 23, s. 2. Immediately after his discharge, and before he had time to return home, the defendant in that case was again arrested on a warrant granted on a second writ *de contumace capiendo* for the same matter. That arrest was held to be irregular, as by the former discharge the defendant was protected *redeundo*, but an objection taken to the second writ from chancery, that it was sued out with-

^a 2 Stra 1189.

^b 4 Barn. & Adol. 355.

out any return to the first, (which is the point in the present case) was overruled by Lord Denman and Mr. Justice Parke, who held that writ to be regular on the authority of the case of *Rex v. Eyre*. The application now was for a new writ. The facts were verified by affidavit.

The Lord Chancellor, after looking into the case of *The King v. Blake*, said he wished to consider the point. His lordship on a subsequent day said, that not being quite satisfied with the statement of the case referred to (*The King v. Blake*, 4 Barn. & Adol.) he obtained from Mr Colville (one of the registrars) notes of several cases from the registrar's book, in one of these, which happened in 1706, an application was made to this Court by one Holland, against whom a writ *de excommunicato capiendo* had issued to supersede that writ. The court did supersede or stay it accordingly, and it expired by exceeding the return without being executed, as in the present case. But Hill, the prosecutor in that case, having afterwards applied to the court and shewn that the *supersedeas* was obtained by surprise, and also that Holland still refused to appear in the bishop's court, and was therefore declared in contempt, and that the cursor refused to make out a new writ *de excommunicato capiendo*, and praying that the cursor might be ordered to make out a new writ, that order was accordingly made by the court. That case appeared to be exactly in point, but the cases referred to upon the application were not; the order may issue to the cursor. It appeared from the notes of the cases furnished to his lordship, that there must be in all cases a perfect *significavit* from the ecclesiastical court shewing that the party was cited to appear, and that he was regularly in contempt.

The Queen on the prosecution of Jolly and others v. Buines, Sittings at Lincoln's Inn, July 18th and 24th, 1840.

Vice Chancellor's Court.

PRACTICE.—PARTIES TO ISSUE.

Where an issue is directed at the instance of an heir at law to try the validity of a will, the Court will not compel devisees in remainder to be made parties for the purpose of concluding their right to a further trial, upon the ground that the heir should not be twice vexed.

Charles Robert Blundell, late of Ince Blundell in the county of Lancaster, Esq., being seised of real estates of considerable value, by his will dated the 28th of November 1834, devised to trustees all his manors, messuages and real estate, except certain hereditaments specifically devised, upon trust to permit the second son of Edward Weld, of Lulworth, in the county of Dorset, Esq., to take the rents for his life, and after his decease, to hold the same for the first and every other son of the said Edward Weld in tail male in strict settlement, with divers remainders over. The testator died on the 30th of October 1837, leaving

Thomas Stonor, now Lord Camoys, the eldest son and heir of Catherine Stonor, the sister of the testator, and the testator's sister Elizabeth Tempest, his co-heirs. The plaintiff, who is the second son of Joseph Weld formerly of Lulworth, instituted this suit for the purpose of recovering possession of the estates comprehended in the devise to the second son of Edward Weld, and stated various circumstances to shew that the testator used the name of Edward by mistake, and that the plaintiff and his children were the parties intended to be devisees. The co-heirs disputed the will altogether, on the ground of incompetency; and an issue having been directed at their instance, the matter now came before the Court for the purpose of settling the terms of such issue.

Parry for the co-heirs, insisted that all the devisees should be at liberty to appear upon the issue, in order that they might be bound by the finding of the jury, and the order of the court in pursuance of it, otherwise the question might be revived by those in remainder, and the heirs would be twice vexed. He cited *Pindar v. Smith*, Mad. & Geld. 48, and *Wright v. Tatham*, 2 Russ. & M. 1.

Jacob, for the heirs, and K. Bruce, for the devisees, objected to the issue being submitted in this form, and contended that such an arrangement could only be made with the concurrence of the devisees, whose interests were sought to be bound; and as they objected, the issue must go in the usual form.

The Vice Chancellor was of opinion that he could not direct the issue in the form required by Mr. Parry, and ultimately it was agreed that an issue *devisavit vel non* should be tried at the next assizes for the county of Lancaster, on the alleged will of the 28th of November, 1834, the plaintiff in this suit being the plaintiff at law, and the defendants, Thomas Lord Camoys and Elizabeth Tempest, being the defendants at law; and it was referred to the Master to settle the issue in case the parties differed about the same. All books, papers and documents in the possession of any of the parties to be produced before the Master before the 11th of August next, and any of the parties to be at liberty to inspect and take copies, &c. The depositions taken in the cause, of witnesses since dead, or who may be unable to attend to be examined, to be read on the trial of the issue.

Blundell v. Gladstone, July 23, 1840.

Rolls Court.

MORTGAGE.—ANNUAL RENTS.

Where an arrear of interest is due upon a mortgage at the time a mortgagee takes possession of the mortgaged property the mortgagor is not entitled to interest on any surplus rent received by the mortgagee after satisfaction of the interest annually payable on the mortgage.

The bill in this case was filed by the plaintiff against the defendant as assignee of a mortgage for an account and redemption. A de-

cree was made for the usual reference to the Master to take the accounts, and the Master having made his report, the cause now came on for hearing on exceptions and further directions. The mortgage was executed in the year 1810 for 1000*l.*, and was assigned to the defendant in 1816; but, previous to such assignment, he had purchased part of the property, so that the annual interest became reduced to 36*l.* 10*s.* In 1816 the defendant entered into possession of the mortgaged premises, there being at that time about two years' arrear of interest due on the mortgage, and the defendant having subsequently received on account of the rents and profits of the mortgaged property much more than was sufficient to pay off the arrears of interest due to him and to keep down the accruing interest, the principal question was, whether the plaintiff was entitled to annual rests, and to charge the defendant with interest on the surplus rents which he had for several years received after satisfaction of the interest due to him.

Pemberton and Coleridge, for the plaintiff, contended that the amount of the purchase money for that part of the property which the defendant had purchased ought to be set-off against the interest which had accrued due previous to the defendant taking possession, and that being more than sufficient for such purpose, there were in fact no arrears due to the defendant at the time he took possession. The defendant had no right, under colour of retaining this sum, to deprive the plaintiff of an advantage in taking the accounts, which, if the defendant had properly appropriated the money in his hands, he would undoubtedly have been entitled to.

Tinney and Montagu, for the defendants, cited *Davis v. May*, 19 Ves. 383; *Latter v. Dashwood*, 6 Sim. 462; *Donovan v. Fricker*, Jac. 165. It was by no means of course to direct a mortgagee's account with rests, but the rule was against such a direction, and there were no special circumstances in this case which could justify a departure from the ordinary mode.

The Master of the Rolls, after stating the circumstances of the case, said that the decree required the amount of the purchase money for that portion of the property which had been purchased by the defendant to be set-off against the amount due on the mortgage from the time the defendant became assignee, and directed that interest should be calculated on the remainder of the mortgage money from that time. According to this mode of taking the accounts there would be a certain amount due for interest at the time the defendant entered into possession of the mortgaged premises, and although his Lordship admitted it to be a hard case, yet he said he could not order the annual rests called for by the plaintiff, for he had recently had occasion to examine all the authorities upon this point, and he could not find any instance of a decree for annual rests where an arrear of interest was due at the time of the mortgagee's taking possession.

Finch v. Brown, July 20, 1840.

Guren's Bench.

[Before the Four Judges.]

PETTY SESSIONS.—CHAIRMAN'S DUTY.

All acts which are to be done by the justices at petty sessions, ought to be done according to the will of the majority, which it is the duty of the chairman to ascertain in the ordinary and regular manner.

In this case a rule had been obtained to file a criminal information against these defendants for alleged misconduct in the appointment of overseers for the township of Manchester, upon the 2d of April last. The affidavits in support of the rule stated that on the day in question, the defendants, with seven other magistrates, assembled on the Petty Sessions at the New Bailey Sessions House, at Salford, for the appointment of overseers, and that two lists of overseers were on that occasion produced on the part of the two political parties of the township; that the chair was taken by Mr. Greaves of his own motion, and that he, in concert with the other three defendants, refused to put to the vote the list furnished by the party opposed to him, but signed the list produced on the part of his own friends, although seven of the eleven magistrates then present were opposed to the list so signed. The affidavits alleged other acts of misconduct, and stated that these defendants had always shewn the greatest hostility to the charter of incorporation of Manchester, and that the persons whose names were contained in the list which had been signed by the four defendants, were known to have the same hostility to the charter, and were on that account favoured by the defendants, who made the appointment in the expectation that the persons appointed would not acknowledge the authority of the town council to make rates, and if such rates were made, would refuse to pay them.

Sir William Follett and Mr. Jonathan Peel, shewed cause against the rule.—To support an application of this sort a corrupt motive must be clearly alleged and proved. Nothing of the kind is to be found here; nothing but mere belief, and facts which may give rise to unfavourable inferences. As to the imputation of the hostility of the defendants to the charter of incorporation, it was known to the court that the validity of that charter was a matter of considerable doubt, and that without any corrupt motives parties might hesitate about acting under it. All the circumstances which were intended to raise a presumption of corrupt motive on the part of these magistrates were denied; and it was shewn that they had acted only in the ordinary manner. Mr. Greaves did not take the chair as represented, but upon the suggestion of Mr. Lees, another magistrate, who was one of those in favour of the other list, and who thought that Mr. Greaves ought to take the chair, as he was the senior magistrate present. There was no ground made out to support this application, and the rule must be discharged.

The *Attorney General* and Mr. *Crompton* in support of the rule.—All the cases, *The King v. Forest*,^a *The King v. Great Marlow*,^b *The King v. Standard Hill*,^c shew that the appointment of overseers must be an act done by the justices at petty sessions, and in the presence of all of them, and with their consent. The appointment here made was illegal.

Lord *Denman*, C. J.—The statute of Elizabeth requires that this act shall be done by two justices; and the justices, for the purpose of preventing any partial appointments, have referred the making of these appointments to the petty sessions. It is clear that that being so, it is the duty of the justices there present to take the opinion of the majority present at the sessions, and any course which deviates from that, raises a suspicion of its impropriety by the very circumstance of that deviation. It appears to me desirable that the duty of the magistrates meeting in petty sessions to do any act, is to do that act according to the opinion of the majority; and it is the duty of the chairman to ascertain that opinion in the ordinary and regular manner. It seems to me that these gentlemen have brought on themselves the suspicion of motives which we can neither sanction nor approve; and it is a mortifying thing to think that gentlemen of their station, and who are therefore looked up to for impartiality, should act in a way to raise these suspicions, and suspicions too, that they are going to appoint other persons to an office for the purpose of those persons acting in the performance of their duty in the same partial manner as the justices who appointed them. Where there is a suspicion of something of this sort being done, we shall be jealous to prevent its being repeated, and the parties do a service to the public who bring such a matter before the Court. It appears to us, however, that in this particular case it is not desirable to make this rule absolute. There may be some doubt as to the facts of this case; at all events they are not sufficient clearly to establish the existence of a corrupt motive; and we must make some allowance, even among these judicial bodies, for political opposition, and it is not to be expected that they should watch over their proceedings with the purpose of totally preventing any manifestation whatever of their political sentiments. But all this is perfectly consistent with good faith, and the opinion of the majority may be taken without any underhand act excluding the opinion of those who are opposed to the majority. It seems to me to be the proper course (hoping that what I have said has made it perfectly clear that this is not a practice which ought to be encouraged) to discharge the rule, but without the payment of costs.

The Queen v. William Garnett, William Smith, John Bentley, and John Greaves, Esquires, Justices of Lancashire, T. T. 1840.—Q. B. F. J.

CHARITY.—RATEABILITY TO THE POOR.

The London Missionary Society is sufficiently a charitable institution to be exempted from rateability to the poor; and where its secretary occupied premises solely for the purposes of the institution, he was held not liable to be rated in respect of such occupation.

This was a case granted upon an appeal against a rate for the relief of the poor of St. Botolph Bishopgate, imposed on the defendant as Honorary Secretary of the London Missionary Society, in respect of the premises belonging to that society, and situated within the parish of St. Botolph Bishopgate. The case stated that a rate had been imposed in respect of these premises; that the premises were let to the society, whose clerks attended there from day to day, to transact the ordinary business of the society; that the defendant, as the Honorary Secretary of the society, did not reside on the premises, but went there once, or more frequently as occasion might require, in each week, to superintend the performance of the business entrusted to the clerks, and for no other purpose; that the premises were chiefly used as a warehouse, in which were deposited the books belonging to the society, and which books were collected together for the purpose of being sent abroad to the countries where the missionaries were residing; and that there was no other occupation of the premises but as above described; that no one slept there, but that the offices were locked up when the clerks had finished their daily labours. The sessions had confirmed the rate, subject to a case, which stated the above facts for the consideration of the Court.

Mr. *Erskine Perry* in support of the rate.—There is a sufficient occupation here to justify the rating. This is not a public charity, or if it is, as it is a charity solely for the benefit of foreign parts, it cannot fall within the exceptions which the law has created in favor of charities in this country. The recent cases of *The Queen v. The Corporation of Liverpool*,^d and *The Queen v. The Trustees of the Blackfriars Bridge, Lancashire*,^e distinctly recognising *The Governors of the Poor of Bristol v. Waite*,^f have expressly declared this to be the principle by which rateability is to be determined, that so soon as any independent occupation for private advantage is discoverable, rateability immediately attaches, and the only reason why corporate property is now held to be exempted from rateability, is, because by act of parliament it is expressly and exclusively devoted to public purposes. This case resembles that of *The King v. St. Giles, York*,^g and the rate must therefore be supported.

Mr. *Ryland*, *contra*.—The principle of rateability is not disputed here, but the case now before the Court does not fall within that

^a 3 Term Rep. 38.

^b 2 East, 244.

^c 4 Maule & S. 378.

^d 17 L. O. 219.

^e *Id.* 281.

^f 2 Har. & Wol. 70; 5 Ad & El. 1.

^g 3 Barn. & Ad. 513.

principle; there is no independent occupation for private advantage; the occupation is solely for charitable purposes. This case therefore, is more like that of *The King v. St. Luke's*,^b than any that have been cited on the other side, and the rate must be disallowed.

Cur. adv. vult.

Lord Denman, C. J., after stating the case, said,—It was argued that though the sessions found the occupation in fact, yet, as it was an occupation for the purposes of a charity, the defendant was not rateable. To this it was answered, that if the occupation was for a charity, it was for a charity for the benefit of foreign parts, and did not therefore come within the rule which exempted such occupations from rateability. Without going into the latter question, we do not think that there is any beneficial occupation by the defendant proved here, so as to establish his liability within the cases on that subject.¹ On the authority of *The King v. Waldo*,^k therefore, we think that the order of the sessions, confirming the rate on the defendant, must be quashed, and the rate itself amended.

The Queen v. T. Wilson, T. T. 1840. Q. B. F. J.

[See the next case.]

The cases applicable to rateability for the relief of the poor, do not apply to rateability for the maintenance of the church.

Lord Denman.—There was another rate depending on the same circumstances as the former, but this was a rate imposed by the 6 G. 4, c. 176, (private act) passed for extinguishing tithes and customary payments within the parish of St. Botolph without Bishopsgate, and for making compensation to the rector in lieu thereof. That act expressly rates all persons within the parish except the rector. The defendant in this case represents the London Missionary Society; he is found to have an actual occupation of the premises, though not for his own private purposes, but as the cases which apply to poor rates do not apply here,¹ we are therefore of opinion, that this rate must be confirmed.

The Queen v. T. Wilson, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

STAYING PROCEEDINGS.—SHIP OWNER.—
EQUITY.—CARRIER.

If the value of goods lost on board a vessel exceeds the value of the ship and freight, and there has been no default of the owner, he may file a bill in equity pursuant to 53 G. 3, c. 159, s. 7, to confine his liability to the ship and freight; but if an action

^b 2 Burr. 1053.

¹ See *Queen v. Sterry*, ante 237, for Lord Denman's observations on these cases.

^k Cald. 358.

¹ See Lord Denman's observations on those cases. *The Queen v. Sterry*, ante, 237.

has been brought for the recovery of the loss by one of the owners of the goods lost, the Court will not restrain the plaintiff from proceeding in his action during the pendency of such a bill.

In this case the plaintiff was the proprietor of certain goods, shipped on board a hoy belonging to the plaintiff, and which plied between London and Dover. The vessel was lost, and it appeared that the value of the goods on board exceeded the value of the hoy and freight of the voyage. The plaintiff brought his action to recover the amount of his loss; the defendant filed a bill in equity, pursuant to 53 G. 3, c. 139, s. 7, to compel a distribution of the value of the vessel and freight among all the owners of goods on board, and to relieve himself by that means, pursuant to the provisions of the act. In the mean time a verdict was found for the plaintiff to the amount of 90*l.*, and the plaintiff was about to sign judgment and issue execution for this amount.

Hoggins now moved on behalf of the defendant, for a rule to shew cause why the proceedings of the plaintiff should not be stayed until the bill in equity, which was now pending, had been disposed of. If the plaintiff was allowed the benefit of this action, the act of parliament would be frustrated, and the other claimants on the amount of the value of the vessel and freight would be prevented from obtaining their rateable share of their value. Such a motion was authorised by the proviso contained in section 6, the words of which were, "subject nevertheless to such order as any court may think fit to make, to restrain proceedings in such action or suit on special circumstances, as justice and equity shall require." The "special circumstances" contemplated by the act, must be considered as having arisen in the present case.

Williams, J., thought that it was by no means clear that a court of law was contemplated by the proviso in question. The probability was, that those words referred to a court of equity. There did not appear sufficient grounds before him for interfering in the manner proposed. If the defendant was entitled to any relief he must seek it in the court of equity in which he had filed his bill.

Rule refused.—*Thiseldon v. Gibbons*, E. T. 1840. Q. B. P. C.

GRANTING NAMES OF PROSECUTORS.—INDICTMENT.—JURORS.

The Court will not entertain a motion to obtain the names of the prosecutors of an indictment until the defendant has pleaded. The list of names of prosecutors of an indictment will, by consent, be given in such a manner as to prevent prejudice accruing to the defendant.

In this case the defendant had been prosecuted for a misdemeanour at the instance of the Society for the Suppression of Vice. The defendant had not pleaded.

Adolphus moved for a list of the names of the prosecutors, in order to enable the defen-

dant to challenge the jurors who might be called to try him. This he could not do unless he had a list of the prosecutors.

Williams, J., was of opinion, that as the defendant had not pleaded, the Court was not in a situation to entertain such an application. Rule refused.

Adolphus afterwards in the term renewed the application, when the defendant had pleaded.

Cooper supported the rule.

Clarkson shewed cause, and contended that the defendant was not in a situation to enforce the demand made. The suggestion was, that some prejudice might accrue to the defendant in consequence of his being unaware of the names of the Society, as it was supposed that, perchance, members of the Society might be placed on the jury, and then some injury might accrue. If that was the real object of the defendant, no objection existed on the part of the prosecution to supply such a list to the coroner of the Court, and then when the jury were struck and called into the box, they might be asked if they were members of the Society. Then if the answer was in the affirmative, it should be a good ground of challenge.

Adolphus and *Cooper* contended that the defendant was entitled to the list of prosecutors absolutely, and without the limitation proposed.

Williams, J., was of opinion that the course proposed by the prosecutors was the right one; and as no prejudice, as suggested, could be caused by this mode of proceeding, the rule must be made absolute on those terms.

Rule absolute accordingly. — *Regina v. Nicholson*, E. T. 1840. Q. B. P. C.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

Ecclesiastical Duties and Revenues.

[In Committee.]

Law of Principal and Factor Amendment.

[For second reading.]

For improving Grammar Schools.

[In Committee.]

Usury on Bills Continuance.

[In Committee.]

Abolition of Arrest Amendment

[In Committee.]

Parliamentary Boroughs.

[For third reading.]

Non-parochial Registers.

[In Committee.]

Admiralty Court. [In Committee.]

Bills passed.

Regency.

Turnpike Trusts.

Assessed Taxes Composition.

Turnpike Acts Continuance.

House of Commons.

Small Debt Courts for

Liverpool,

Marylebone,

Wakefield Manor.

Ecclesiastical Courts.

[For second reading.]

To extend the Term of Copyright in Designs of Woven Fabrics. Mr. E. Tennant.

[In Committee.]

To extend Freeman and Burgesses' Right of Election. Mr. F. Kelly.

To consolidate and amend the Law of Sewers.

[In Committee.]

To abolish capital punishment in all cases except Murder.

[Negatived.]

Mr. Kelly.

For the further amendment of the Poor Law.

[For second reading.]

Registration of Voters. [For second reading.]

Right of Voting. [For second reading.]

Insane Prisoners. [For second reading.]

Parochial Assessments. [In Committee.]

Prevention of Bribery. [For second reading.]

Notice of Elections. [In Committee.]

Administration of Justice in Equity.

[Deferred.]

Bills passed.

Attorneys and Solicitors of Ireland.

Affirmations.

Drainage of Lands.

Turnpike Acts Continuance.

Marriages Registration Act Amendment.

Metropolitan Police Courts.

ATTORNEYS AND SOLICITORS OF IRELAND.

A bill has been recently brought in to enable attorneys or solicitors of any of the Superior Courts at Dublin to be admitted into any other Court there without payment of additional stamp duty.

THE EDITOR'S LETTER BOX.

The sixth article on the Law of Joint Stock Companies will probably be given in our next Number.

"A Country Subscriber" inquires, in the case of a mortgage for 500*l.*, on a transfer of that mortgage, (to which the mortgagor is a party) where 200*l.* more is advanced, what is the proper stamp to affix?

We regret that the letter of J. W. W. has been so long deferred that its insertion would now be out of place.

"A Young Articled Clerk" would not be benefited by the adoption of his recommendation. He should answer the questions for himself.

The letters of "Miles," "A Student," "Civis," and A. E. F., have been received, and shall have early attention.

The letter on Unqualified Practitioners in County Courts shall be attended to.

We are not aware of any statute applying to the case mentioned by R., except the Act for Preventing Cruelty to Animals, 5 & 6 Wm. 4, c. 60. The owner might maintain an action.

The Legal Observer.

SATURDAY, AUGUST 8, 1840.

—“Quod magis ad Nos
Pertinet, et noscere malum est, agnoscimus.

HORAT.

THE LAW OF JOINT STOCK COMPANIES.—No. VI.

ON MAKING CALLS.

ONE of the most important, and often-times difficult, duties which fall on the directors of joint-stock companies, is, the making and enforcing the payment of calls. The one is easy enough, but the other is not always so easy. It is not hard to “call,” but “Will they come when you do call for them?”

This is sometimes much more difficult. Persons frequently enter into a company, and pay the first call, under mistaken expectations of benefits to arise from the undertaking; or they purchase shares to sell again; or they change their intention; or find other employment for their money. All these, and other circumstances, often render the payment of further calls a business equally disagreeable to the payer and the receiver. It is, however, obvious that the payment must be made, and we shall endeavour in this article to shew how it may be enforced; and we shall pursue the same arrangement which we have adopted in preceding articles, and consider, first, how calls may be enforced, where there is an act of parliament, and next, where there is no act.

Where there is an act, the enforcing payment of calls must depend on the terms and provisions of the act, and these will be construed strictly. The rules prescribed by the act must be closely adhered to, and the conditions on which the powers are given to the company must be rigidly complied with.

This will be seen from the case of the *Thames Tunnel Company*.^a By the act of

parliament passed for making a tunnel under the river Thames, the company of proprietors were enabled to raise a sum of 200,000*l.* for the purpose of making the tunnel; and it was enacted that the persons who *had subscribed*, or who should thereafter *subscribe* or advance any money towards making the tunnel, should pay the sums by them respectively *subscribed*, at such times and places, and in such manner as should be directed by the directors; and in case any such subscriber should neglect to pay the same at the time and place, and in the manner so required for that purpose, the company or their directors were empowered to sue for and recover the same. By another section, reciting that the probable expenses would, according to the estimate thereof, amount to 160,000*l.*, and that the sum of 140,000*l.*, being more than four-fifths of such expenses, had already been subscribed for defraying such expenses by several persons under a contract, and their heirs, executors, and administrators, for payment of the several sums so subscribed by them respectively, it was enacted that the whole of the sum of 160,000*l.* should be subscribed in like manner before any of the powers and provisions given by that act should be put in force. And it was held that the word “*subscriber*” applied only to those who had stipulated that they would make payment, and not to all those who had already advanced money; and consequently, that a firm whose name was mentioned in the recital of the act of parliament as one of the original proprietors, and who had paid a deposit on eight shares, but who had not signed any contract, was not a subscriber within the meaning of the act, and not liable to be sued by the directors.

^a *The Thames Tunnel Company v. Sheldon*,
6 B. & C. 341.

So where the statute establishing the company provided that the whole of the said sum of 100,000*l.* shall be subscribed before any of the powers and provisions given by the act shall be put in force: the company made a call on the shares before the subscriptions were complete, and commenced an action for the call after they were so; and it was held by Lord Tenterden, C. J., that such action was not maintainable, the completion of the subscription list being necessary to enable the company to make the call as well as to bring the action.^b

A company was empowered by act of parliament to carry on certain works, and the committee were authorized to make calls for money upon the proprietors, not exceeding 10*l.* per share from time to time, as they should find necessary, so that no calls should be made at the interval of less than two months from each other. None of the powers of the act were to be put in force till 33,500*l.* were subscribed. The committee began their works before that sum was subscribed, and made a single order, calling on the proprietors for several payments of 10*l.* each, to be made at intervals of two months. A subsequent act recited that the capital of 33,500*l.* had not been subscribed; that the company had proceeded in their works, incurred debts, &c. and that a certain sum was due from defaulters in the payment of calls. It provided for carrying on the works, and for making further calls; and it enacted that the powers, &c. of the former act (except where expressly altered) should remain vested in the company, though the 33,500*l.* had not been subscribed. In an action by the company against one of the committee for money due on some of the calls made as above mentioned, others of which he had paid, it was held that the calls being all made at one time, were irregular; that they were not ratified by the mention of them in the second statute, as it could not be presumed, in the absence of any expression to such effect, that the legislature, when passing that act, was apprised of their being improperly made, and that the defendant was not stopped by having joined in making the calls, or by his payment of part of them, from disputing their validity; for that the calls being against law, no person ought to have been misled into a compliance with them by the defendant's conduct or admission.^c

This case, however, in some respects clashes with a case decided prior to it in the Exchequer. In that case an act of parliament, 6 Geo. 4, c. xxx, was passed to enable a company to form a railway, and prescribed the form of action against the proprietors for calls, and enacted that it should only be necessary to prove that the defendant was a proprietor, and that the calls had been made in pursuance of the act; it also recited that a sum of money had been subscribed by the proprietors under a contract binding their heirs, whereas in fact that sum had not been subscribed, and no contract under seal had been executed by the proprietors; and it was held that a defendant, who with the knowledge of the misrecital, had paid previous calls and acted as a proprietor, was stopped from questioning the validity of the act, upon the ground of misrecital, and that it was not incumbent upon the plaintiffs to shew that the defendant had executed a contract under seal in order to prove that he was a proprietor within the meaning of the act.^d This case does not appear to have been cited in the subsequent case of the Stratford Railway Company.

A very important decision has recently been given on the subject of making calls, in the case of the Brighton Railway.^e By the act of this company the directors were entitled to recover for calls in arrear upon proving that the defendant was a proprietor, and that notice of the calls was given according to the act, unless the defendant should prove that he had paid the full amount of his subscription. The defendant having pleaded to an action for calls that he was not indebted, and was not a proprietor, the Court refused to allow him to add pleas that due notice of the calls was not given; that no time or place was appointed for the payment; that the calls were made for purposes other than those warranted by the act; that they were made after deviations in the line; and that fewer shares were allotted than the act required. We have already given the judgment of Tindal, C. J., in this case.^f

In an action brought by the directors for calls, the register book of the company is usually made evidence by the act constituting the company, of the defendant's

^d *Cromford Railway Company v. Lacy*, 3 Y. & Jer. 80.

^e *London and Brighton Railway Company v. Wilson*, 6 Bing. N. C. 135; fully given 19 L. Q. 306.

^f 19 L. Q. 306.

^b *The Company of Proprietors of the Norwich Navigation v. Theobald*, 1 Moo. & Mal 151.

^c *The Stratford and Moreton Railway Company v. Stratton*, 2 B. & Adol. 518.

being proprietor of the number of shares assigned to his name.^a

We have already, in a previous article, considered how far a person can avoid the further payment of calls by assigning his share.^b

These are the principal cases relating to enforcing the payment of calls, where there is an act of parliament, and it will be seen that they chiefly turn on the construction of the particular act of parliament on which they were decided. A word remains to be said where there is no act of parliament. In this case the directors must strictly pursue the directions contained in the deed of settlement for this purpose. If the person on whom the call is to be enforced has signed the deed, he will, of course, be bound by its provisions; if he has not signed the deed, there will, in some instances, be more difficulty in enforcing the payment of a call; but it is usual before allotting shares in companies to require the person to whom they are allotted to sign a declaration of their willingness to pay all future calls, and to abide by the provisions of the deed of settlement. In these cases, therefore, the directions of the deed of settlement should be pursued in the same manner as if the deed had been signed. Where there is no act of parliament authorizing the company to sue and be sued, the difficulty of parties to the action will sometimes arise; but, however, as a general rule, although there be no act, the directors would be entitled to sue for calls.^c

LORD BROUGHAM'S BILL FOR CHANCERY REFORM.

We cannot but again express our great disappointment at the rejection of the Lord Chancellor's Bill; nor do we conceive that a sufficient reason has been assigned for withdrawing it. It would seem never to have been entered into heartily in the House of Commons. Why was it not immediately proceeded with when first it came down? We know of no business of one-tenth of the importance now before the House. Excuses of various sorts were made from time to time, and we cannot but think that the reason last

assigned was only one of them. This reason thus given was, that Sir Edward Sugden intended to oppose the Bill. Now we fully grant that the opinion of Sir Edward on this matter was worthy of all due respect and attention. He was entitled to a hearing, and if he could have persuaded the House that his arguments were sufficiently weighty to throw out the Bill, then nobody could have complained. But surely he should have been heard: it should have been seen how he would have been supported,—whether ten men would have followed him,—whether one man would have seconded him,—or whether, if he had opposed the Bill entirely, he would not, as on former occasions, have stood entirely alone. But what says Sir Edward Sugden himself on the occasion? He declares he did not intend to oppose the Bill as a whole; that he would have tried to have made it as perfect a measure as he could; but that was all he wished. We believe the fact to be, that he would have made a speech, proving to his own complete satisfaction that the measure would do little or no good, and would have rested satisfied with this effort; and this threat of a long speech so terrified Lord John Russell, that he chose to withdraw a Bill to which thousands were looking for relief—a Bill which had the deliberate sanction of the House of Lords, of the Lord Chancellor, the Master of the Rolls, and Lord Chief Baron for the time being, and two former and probably future Chancellors. All interests being consulted, those *in esse* and *in posse*; Chancellors present and Chancellors to come; all the Equity Judges assenting; all the Bar desiring; all the solicitors intreating; all the suitors imploring; and yet the cup so raised to their lips is to be dashed down because of the supposed opposition of one man, who himself denied that he intended to oppose.

What then was the reason in the background? We know not, but we are quite satisfied there *was* one. Some say that it was the old puzzle. A loss of a seat, or the risk of a seat. The Solicitor General was to be the new Baron, in place of Mr. Baron Rolfe, who was to be one of the Equity Judges, and then, if the Solicitor General was so made, then a seat might be lost, and then the new Solicitor General might be in Parliament; and then he might lose *his* seat; and then two seats might be lost. Then again, it is said, that there were difficulties about disposing of the Equity Judgeships. Unexpected claims were made, which could not be passed over, to avoid which it was

^a See *Bristol and Taunton Canal Navigation Company v. Amos*, 1 Mau. & Sel. 569.

^b See No. I, *ante*, pp. 1—3.

^c *Phelps v. Lyle*, 2 Per. & Dav. 314; and see *ante*, p. 177, No. V, Actions and Suits by and against Joint-stock Companies.

determined to abandon the Bill. These and similar rumours are current, and we can only say if there was no better reason for deferring a measure which would have saved hundreds from beggary and despair, we blush for those who yielded to them. They are utterly insufficient, and very heavy is the responsibility of all concerned, who will thus allow another year to close on the suitor, and virtually shut the doors of the Court against him. At the same time feeling this in the strongest possible manner, we are greatly pleased that the session will not close without something being done in favour of Chancery Reform. We have always divided the grievances of the Court of Chancery into three parts: 1. The Appellate Jurisdiction. 2. The hearing of causes; and 3. The offices connected with the Court. The first has not been attempted to be remedied in the present session; the second would have been provided for by the Lord Chancellor's Bill, which has been withdrawn; but the proper reforms, under the third head, we trust and believe, will be remedied by a bill which will pass in the present session. We refer to the bill which was brought in by Lord Brougham, and has been passed quickly through both Houses, which if properly acted on, and we doubt not that it will be so, will be the most valuable measure yet passed with respect to the Court of Chancery. We shall advert very fully to this Bill in our next number, and the important and interesting debate which took place respecting it in the House of Commons on Wednesday. We now print the bill, as we believe it was amended in the Committee. But we should mention that a clause was proposed by Mr. Stewart, giving compensation to any officers who might be affected by the proposed reform, and agreed to by the House, which will be a very beneficial one. We have now only room to give the Bill.

**A BILL, AS AMENDED BY THE COMMITTEE,
INTITULED, AN ACT FOR FACILITATING THE
ADMINISTRATION OF JUSTICE IN THE COURT
OF CHANCERY.**

WHEREAS it would greatly contribute to the diminishing of expense and delay in suits in the Court of Chancery if the process, pleadings and course of proceeding therein were in some respects altered; but this cannot be conveniently done otherwise than by rules or orders of the judges of the said court from time to time to be made, and doubts may arise as to the power of the said judges to make such alterations as may be expedient without the authority of parliament; be it therefore enacted,

by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, may and he is hereby required, by any rules and orders to be from time to time by him made with such advice and consent as aforesaid, at any time within five years from the passing of this act, to make such alterations as to them may seem expedient in the form of writs and commissions, and the mode of sealing, issuing, executing, and returning the same, and also in the form and mode of filing bills, answers, depositions, affidavits and other proceedings, and in the form and mode of obtaining discovery by answer in writing or otherwise, and in the form and mode of pleading, and in the form and mode of taking or obtaining evidence, and generally in the form and mode of proceeding to obtain relief, and in the general practice of the Court with relation thereto, and also in the form and mode of proceeding before the Masters, and in the form and mode of drawing up, entering and enrolling orders and decrees, and of making and delivering copies of pleadings and other proceedings, and to make such regulations as to the taxation, allowance, and payment of costs, and for altering, superintending, controlling and regulating the business of the several offices of the Court, and also of collecting the fees payable to the Suits' Fee Fund, and for directing payment into the Suits' Fee Fund of the copy money now received by any of the officers to their own use, and otherwise for carrying into effect the said alterations, as to them may seem proper; and all such rules, orders and regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making and issuing of the same, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until each House of Parliament shall have actually sat thirty-six days after the same shall have been laid before each House of Parliament as aforesaid; and every rule, order or regulation so made shall from and after the time aforesaid be binding and obligatory on the said Court, and on any Courts in which the decrees or orders of the said Court shall be reviewed by way of appeal, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament, unless the same shall, by vote of either House of Parliament, be objected to.

2. And be it enacted, that from and after the passing of this act such additional officers, clerks and messengers in any of the present or future offices of the Court, as the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, shall determine to be necessary and proper, shall and may be from time to time appointed.

3. And be it enacted, that the officers, clerks and messengers who shall be appointed as hereinbefore directed, and the present clerks, officers and messengers of the said court, shall receive, by way of salary or additional salary for the performance of their several duties, such annual sums as the Lord Chancellor and the Commissioners of her Majesty's Treasury shall from time to time fix and determine; and that the same, and the expense of copying and writing for the said court or any of the officers thereof, and the general expenses of carrying this act into effect, shall be paid and payable under an order of the said Court of Chancery, out of the Suitors' Fee Fund account of the said court, in the same manner as the salaries now payable out of the same fund are payable, and at such times as shall in such order as aforesaid be mentioned.

4. And be it enacted, that in the construction of this act the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

5. And be it enacted, that this act may be altered, amended or repealed during the present session of parliament.

There is also, as we have stated, a clause for compensation; but we hope to give the act in the next Number.

See a report of the Debate on the Bill, p. 281, *post*.

CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. VII.

MAINTENANCE OF CLERGY.

3 & 4 Vict. c. 20.

An act to amend an act passed in the first year of the reign of his late Majesty King George the First, intituled "An act for rendering more effectual her late Majesty's gracious intentions for the augmentation of maintenance of the poor clergy," and to render valid certain agreements which have been made in pursuance of the said act, and for other purposes.

[3d July, 1840.]

The preamble of the act recites the letters patent of 3 Anne, incorporating the governors of Queen Anne's Bounty, the rules prepared by the Governors according to the letters patent, the 1 Geo. 1, c. 10, and the alteration and extension of the rules. It is then enacted as follows:

1. *Certain appropriations made by the governors confirmed.*—Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that all appropriations heretofore made by the said governors of any sum or

sums of money out of the monies at their disposal to the augmentation of any cure shall be good, valid, and effectual to all intents and purposes whatsoever, in all cases in which any benefactor or benefactors has or have, in order to obtain any such appropriation for the augmentation of the same cure, contributed not less than the amount of benefaction which was at the time of any such augmentation required in that behalf by the rules, orders, and constitutions then in force, notwithstanding that the sum or sums so appropriated by the said governors to the augmentation of such cure shall have exceeded in any one year the sum of two hundred pounds.

2. *Certain agreements made by the governors confirmed, and provisions of recited act extended.* *Amount of appropriations hereafter to be made shall be within the limit prescribed by rules in force at the time.*—And be it further enacted, that all agreements already made and hereafter to be made, with such consent and approbation of the patron and ordinary as required by the said recited act, and with the consent and approbation of the said governors, with any benefactor or benefactors contributing to the augmentation of any cure, touching the patronage or right of presentation or nomination to such augmented cure, for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, according to the provisions of the said recited act, and all grants and assurances made and to be made for carrying such agreements into effect, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, in all cases in which the yearly value of the augmented cure shall have been or shall be within the limits prescribed for the same by the rules, orders, and constitutions which shall have been or shall be in force at the time of making such agreements respectively as aforesaid, notwithstanding that such yearly value shall have exceeded or shall exceed the sum of thirty-five pounds, or that the amount appropriated by the said governors out of the monies at their disposal to the augmentation of such cure shall have exceeded or shall exceed in any one year the sum of two hundred pounds, or that such yearly value and also the amount so appropriated shall both have exceeded or shall both exceed the same several sums respectively: Provided nevertheless, that so far as relates to such agreements as aforesaid the amount of all appropriations hereafter to be made by the said governors to the augmentation of any cure shall be within the limits prescribed for the same by the rules, orders, and constitutions which shall be in force at the time of making such agreements respectively as aforesaid.

3. *Provisions of 1 G. 1, c. 10, extended to this act in cases where no appropriation shall be made by the governors.*—"And whereas it is expedient to extend the provisions of the said recited act, with respect to such agreements as aforesaid, to cases in which no appropriation shall be made by the said governors out of the funds at their disposal to the augmentation of

the cures to which such agreements shall respectively relate;" be it therefore further enacted, that all agreements hereafter to be made, with such consent and approbation of the patron and ordinary, as required by the said recited act, and with the consent and approbation of the said governors, with any benefactor or benefactors contributing to or providing for the augmentation of any cure, touching the patronage or right of presentation or nomination to such cure, for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, according to the provisions of the said recited act, and all grants and assurances to be made for carrying such agreements into effect, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, in all cases in which the yearly value of such cure shall be within the limits prescribed for the same by the rules, orders, and constitutions which at the time of making such agreements respectively as aforesaid shall be in force with respect to cures, for the augmentation of which appropriations to meet benefactions may be made by the said governors out of the funds at their disposal, notwithstanding that in any of such cases no appropriation whatsoever shall be made by the said governors out of the funds at their disposal to the augmentation of the cure to which such agreements as aforesaid shall respectively relate.

4. *On completion of an agreement for transfer of patronage of a cure to a benefactor, though no appropriation be made by the governors, the cure to be considered as one augmented by them.*—And be it further enacted, that every cure touching the patronage or right of nomination to which any such agreement as aforesaid with any benefactor or benefactors, shall be made for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, though no appropriation whatsoever to the said cure for the augmentation thereof shall be made by the said governors out of the funds at their disposal, shall from and immediately after the completion of such agreement, be deemed and considered in law, in all respects and to all intents and purposes whatsoever, as a cure augmented by the said governors, and the same, and the minister or incumbent thereof, and his successors, shall be subject and liable to all the laws, rules, and regulations relating to or concerning cures augmented by them and the ministers or incumbents thereof.

5. 2 & 3 Vict. c. 49. *Endowments accepted under the last recited act, by the governors to be (except in special cases) subject to the same rules as if they had been appropriated by the governors.*—"And whereas by an act passed in the second and third years of the reign of her present Majesty (chapter forty-nine,) intituled "An act to make better provision for the assignment of Ecclesiastical districts to churches or chapels augmented by the governors of the Bounty of Queen Anne, and for other purposes," after reciting that it was expedient to make provision for the more permanent se-

curity of the endowments and emoluments which should have been or might thereafter be provided for the use or benefit of any church or chapel, whether built, acquired, or appropriated, or to be built, acquired, or appropriated, under the authority of certain acts therein recited or referred to, or of any of them, or under any other authority, or for the use or benefit of the incumbent of any such church or chapel, or of the spiritual person serving the same, it was enacted, that it should and might be lawful for the said governors of the Bounty of Queen Anne to accept, take, and hold any such endowments and emoluments upon the trusts and for the intents and purposes for which the same should have been or might thereafter be given or granted by the person or persons providing the same, in like manner as any such endowments or emoluments might then be taken or held by any private trustees or trustee; and that it should and might be lawful for any trustees or trustee of any such endowments or emoluments to assign and transfer the same to the said governors of the Bounty of Queen Anne, to be held and applied by them upon the same trust, and for the same intents and purposes as the same previously to such assignment and transfer were held by such trustees or trustee: And whereas it is expedient to make such further provision as is herein-after contained for the application and disposition of all endowments and emoluments accepted by or assigned to or to be accepted by or assigned to the said governors under the aforesaid provisions of the last recited act;" be it therefore further enacted, that all endowments and emoluments whatsoever already accepted or taken by or assigned or transferred to, or to be hereafter accepted or taken by, or assigned or transferred to, the said governors, under the aforesaid provisions of the last recited act, and the money, stocks, parliamentary or other funds or securities, land, hereditaments, or other property which the same respectively may consist, shall, so far as circumstances will permit, and subject and without prejudice to the trusts, intents, and purposes upon and for which the same shall have been given or granted by the person or persons providing the same, be appropriated by the said governors to the particular benefice for which the same respectively shall have been provided, and be applicable and disposable by them for the benefit and augmentation of such benefice, in such and the same manner, and with such and the same powers of investment in the purchase of land, and exchange for other lands and hereditaments, and otherwise, and other powers and authorities, in all respects, according to the rules, orders, and constitutions for the time being in force for the management of the Bounty of Queen Anne, as if the money, stock, land, hereditaments, or other property of which such endowments and emoluments may respectively consist, had been originally provided or appropriated by the said governors out of the funds at their disposal for the benefit and augmentation of the same benefice.

ALLEGED ABUSE OF THE RIGHT OF ADVOCATES.

WE have received a letter, couched in strong terms of animadversion, on the license taken by Counsel in a late case before the Central Criminal Court. It has, we believe, been frequently supposed that an advocate should know the exact truth regarding the offence imputed, in order that he may avoid any dangerous questions, and more safely conduct the defence. This, we think, is by no means a settled rule, and at all events we consider it to be clear that counsel should not attend the prisoner personally, but receive his instructions through a solicitor, with whom he may freely communicate, and of whom he may require such information as he deems necessary to the effective discharge of his duty. Whether the actual guilt of the accused be disclosed in the brief, or verbally made to counsel, or whether the confession be elicited by other means, it is clear beyond all doubt that the advocate must act for his client as if no such disclosure were made. It is his bounden duty to make the best defence in his power. Whilst he is not called upon to disclose his own personal belief of his client's innocence, he certainly ought not to assume the office of judge or jury, but, confine himself strictly to his province of advocate. Our correspondent admits that the feeling of the profession is against him, and we think the public interest is also opposed to his view of the subject. With these remarks we give the following extracts from our correspondent's letter:—

"I have long considered that counsel, in the course of their general practice, too often make an abuse of the great privilege of license of speech, the free exercise of which custom has confirmed to them.

"In requesting you, therefore, to open your columns to a few brief observations on the important subject under consideration, I am aware the feeling of the profession is enlisted against me; but making the most ample allowances, I cannot bring myself to believe that in *all* cases, and under *all* circumstances, the bar are justified in pleading against conscience, as a matter of course; and in the defence of acknowledged guilt of the deepest dye, adopting a course which should be properly confined to the protection of innocence from unfounded accusation, and weakness from overbearing oppression.

"With reference to the case recently tried before the Central Criminal Court, I wish it to be understood that the prisoner's confession was made to his counsel before he commenced his speech in his defence. My remarks will therefore apply subject to such being the fact.

"The learned counsel denounced the police as *intent on their prey*,' and lashed them with the most opprobrious epithets for doing no more than discharging the duty for which they are employed and paid, and which the laws require at their hands.

"An innuendo was thrown out that the female servants were privy to the act, and an attempt was made to stigmatise them as *perjured*, for stating what, from the confession then recently made, the learned counsel knew to be true from the prisoner's own lips.

"The utmost was done to confuse the witness regarding the stolen plate, and her motives for coming into the box to give evidence in the discharge of a most unpleasant duty, were subjected to the severest comments, which nothing has transpired to show were justifiable.

"The name of the Deity was invoked, most irreverently, when we consider that a consciousness of his client's guilt, beyond all doubt, filled the advocate's mind; and the jury were doomed to everlasting perdition, in case they did what was really their duty to do."

"I would never impose restrictions on the bar, any more than on the press; but, at the same time, I believe that the dignity of the former, as well as the usefulness of the latter, may be compromised, by turning an invaluable privilege into an unwarrantable licentiousness.

"Lex."

UNQUALIFIED PRACTITIONERS IN THE COUNTY COURTS.

By the 12th Geo. 2, c. 13, s. 7, (the only statute relating to unqualified persons practising in the County Court that I can find) it is enacted that in case any person shall commence or defend any action, &c. in the County Court, who shall not *then* be legally admitted an attorney or solicitor, according to the 2nd Geo. 2, he shall forfeit 20*l.* to be recovered within twelve months after the offence committed. I have read the various books of practice which treat of the law of attorneys, but I cannot satisfy myself on the following

"We are informed that the supposed solemn asseveration of the learned counsel has been erroneously reported. The confession of guilt, we believe, was voluntarily made, and not sought for either by the counsel or the solicitor of the prisoner; and that up to the time of the discovery of the plate, and the prisoner's confession, which immediately followed, his legal advisers believed him to be innocent. ED.

points, viz. whether the Court of Queen's Bench will grant a rule against an attorney of that Court, to shew cause why he should not be struck off their roll, for allowing an unqualified person (for his own benefit) to practise in the County Court?—If yes—Within what time must the application be made after the offence committed? The questions are important, and affect many country practitioners who allow their articulated clerks to practise in the County Court for their own emolument, and the better to qualify themselves for the profession.

A COUNTRY ATTORNEY.

As the 12 Geo. 2, c. 13, s. 7, inflicts a penalty on persons practising in the County Court who are not attorneys, we presume the Superior Courts, under their *general jurisdiction* over the attorneys of their Courts, would prevent such attorneys from lending their names to unqualified persons; but we are not aware of any case in point. The 22 G. 2, c. 46, s. 11, evidently applies to unqualified persons practising in the Superior Courts, and the application must be made to the Court from whence the process issues. The Judge of the County Court ought to ascertain that the persons who appear before that Court as practitioners are really attorneys, or persons acting *bona fide* as the clerks of attorneys.

Ed.

BANKER'S DRAFT PROVED AS A CODICIL.

We have received the following statement from a correspondent on whose accuracy we can fully rely:—

A testator, on his death-bed, drew a draft on his banker for 200*l.*, in favour of a person who was then with him, and delivered it to her, but she neglected to receive it from the banker's until after the testator's death. Soon afterwards the executors demanded the return of the money, which her legal adviser recommended her to repay, and to seek to prove it as a codicil to the will. The money was accordingly returned, and the proper proceedings adopted in the Ecclesiastical Court, where a decree was obtained, establishing the draft as a codicil to the will, and ordering the estate to pay the costs.

NOTES

ON THE LEGAL EXAMINATION.

BY A BYSTANDER.

[Continued from p. 215.]

THE friends evidently met in a very different mood to that in which they left in the morning, and had just congratulated each other on the examination being over, when we entered. Singleton was the life of the party, having, as he said, answered every question except those on Criminal Law. Newton, it appeared, had answered about fifty in all the departments. Neverton about the same number in the first four. Neverfear and Ready made no other report than that they had done enough to ensure their passing, and that they had staid till nearly five o'clock from respect to the Examiners;—at which Singleton smiled.

A long and noisy discussion followed, as to the correctness of five or six of the answers; and as many more were admitted to be wrong. Singleton was surprised at the learning he had displayed, and, frankly admitting he did not think he had had so much law in him, vowed revenge upon the Examiners if he met them near Bilbury Moss, if they did not let him pass. The locality of the Moss, however, was not stated, nor is it important so far as the Examiners are concerned, Mr. Singleton having obtained their certificate that he was duly qualified to act as an attorney.

Newton was modest, and said little. Neverton was vexed at two or three of his answers, which (to use his own expression) shewed "he was a fool," although he detected his mistakes the moment he turned his back upon the Examiners to leave the hall. Neverfear and Ready were apparently alternating between hope and fear; and, according as the one or the other appeared in the ascendant, were, as Singleton observed, gloriously upon stilts, or marvellously in the dumps.

This is certain, that they had declined answering a single question in Criminal Law; and it appeared from the whole conversation that many others had done so too. This, we think, is to be regretted, inasmuch as the Criminal now forms an important part of the Law of the land; and although the professional leviathans may decline to appear before a magistrate, or even in a Criminal Court, we apprehend it is unfair towards those gentlemen who, as magistrates, devote their time and their talents for the public benefit, to permit this branch of Jurisprudence to be neglected, and fancy it is also a reason why some alteration should be made in the mode of examination, so as to render it compulsory to answer in this department. Those gentlemen have a right to the honest and able assistance of every legal professor, and in proportion as the knowledge of this portion of the law is encouraged, so much the more will that assistance be appreciated, and the country benefited.

We ventured to make the above observations in a conversational form, and were gratified by the assurance of Mr. Singleton that he thought we were right; and from the light in which we had placed the matter, he was conscious that he had been wrong in neglecting this department. Ready and Neverfear were of opinion that it was an inferior one, and therefore not deserving the attention of those who had a tolerable prospect of a large practice; besides which, they observed that barristers were now generally appointed to all important magisterial situations, and that country magistrates generally had the assistance of experienced and intelligent clerks, so that the assistance of professional men was not called for.

We were constrained to admit this to a limited extent, but thought it prudent to drop a conversation which bid fair to become animating, by simply declaring that we were aware it was one of the novelties of the day to treat the influence of country gentlemen as an open question, and apologising for what we had said on behalf of "the order," we begged that our presence might not be any restraint upon them.

The little agitation we had involuntarily occasioned having subsided, the friends busied themselves in discussing one or two doubtful points, upon which no two of them were agreed, and each argued himself into the conviction that he was right; but as there was no court of appeal they were left undetermined: a reference to our own solicitor, however, has satisfied us that Newton's views were the correct ones.

The gentlemen having, as they said, dispatched a score or two of letters to their friends, informing them that they were all right, they separated for the evening, determined to evince as little anxiety as possible relative to their certificates, which all made sure of obtaining.

THE STUDENT'S CORNER.

DESCENT OF LANDS HELD IN GAVELKIND.

I am not aware that the attention of the public has yet been called to the following question, arising on the recent Inheritance Act.

By statute 3 & 4 W. 4, c. 106, s. 2, it is enacted, that "in every case descent shall be traced from the purchaser," and on reference to the first section it will be seen that the act extends to all hereditaments, "whether descendible according to the common law, or according to the custom of gavelkind or borough English," &c.

A., a purchaser, dies seized of an estate in gavelkind, leaving two sons *B.* & *C.*, who will succeed to the property equally. *B.* then dies, leaving a son *D.* surviving him. Now under the old law, *D.*, would clearly have been entitled to the entirety of his father's share,

but, as the act provides that all descents "shall be traced from the purchaser," it will be necessary to enquire who are the heirs of *A.*; and this being an estate in gavelkind, it would seem to follow that, as regards *B.*'s moiety of the property, his son *D.* and his brother *C.* would be entitled to it equally, as heirs of *A.*, and that thus *C.* would possess three fourths of the property, and his nephew *D.* only one fourth.

A similar change of ownership would take place on the death of either *C.* or *D.*, so that unless one party alienated his share, or executed some assurance so as to vest the property in himself as a purchaser under the 3rd section of the act, the ownership would remain continually fluctuating on the death of every person entitled to any part of the estate.

PHILALETHES.

TENANCY BY ENTIRETIES.

I beg to refer P—e, p. 233, *ante*, (who wants to know what interest husband and wife respectively take when a term of years is granted to them "their executors, administrators, and assigns") to Bacon's Abridgment "Joint Tenants," where the law is thus laid down: "Husband and wife may be joint-tenants of a lease for years, of other chattel real, as well of a freehold or estate of inheritance. But where the husband is jointly possessed of a leasehold interest, or other personal thing, he may dispose of it in his lifetime without the consent or concurrence of his wife."

"But if a lease be made to baron and feme for years, the baron cannot devise the term; for the feme is in by survivorship before the devise takes effect."

A. R. F.

It appears from 2 Preston's Abs. 57, and Watkins' Principles of Conveyancing by White, 171, that the husband alone can dispose of the term, so as to bind the wife, *her surviving*. See also the case of *Grote v. Locroft*, Cro. Eliz. 287, referred to in Preston Abs. 57.

B. W. J.

THE DEBATE ON THE CHANCERY BILL.

THE discussion which took place in the Committee on the Chancery Bill not having been given in the newspapers, we have been favoured with the following report of what took place, which we gladly give.

Mr. Gordon in the Chair.

When the words "and also in the form and mode of filing bills, answers, &c.," in the first clause, were read,

Mr. Aglionby said, he wished to ask whether

this clause would empower the Chancellor and Judges to make orders dispensing with bills and answers, or at least with answers in common suits, for payment of debts and legacies, and other simple cases.

The *Attorney General*.—There is a subsequent clause authorising the Lord Chancellor and the Judges generally to make rules and orders as to the form and mode of proceeding to obtain relief, and to alter, control, and regulate the business of the several offices of the Court. Under these powers the Judges might, as he conceived, in such cases, if they should think it expedient, dispense with bills and answers altogether, and substitute a petition, or some simple mode of proceeding.

Mr. Lynch concurred in the opinion of the *Attorney General*,

Mr. Aglionby.—I am quite satisfied.

On the words "and of making and delivering copies of pleadings and other proceedings" being read,

Mr. Aglionby stated, that he doubted whether the judges would act upon this part of the bill, and that part which authorised them to direct payment into the "Suitors' Fee Fund" of the copy-money now received by any of the officers for their own use, inasmuch as this could not be done effectually without very largely interfering with the emoluments of the Six Clerks and Clerks in Court; he wished to know how this was.

Mr. James Stewart stated that to meet this difficulty, he had prepared a clause for allowing compensation to the officers whose emoluments might be affected under this act, which he would propose when this bill was gone through.

Mr. Aglionby wished to ask whether this act would authorise the Judges to regulate the fees now received by the copying clerks, under the 40th section of the 3 & 4 W. 4, c 94.

The *Attorney General* said, certainly, as he conceived, if it were deemed expedient and proper.

On that part of the clause which relates to "the allowance and payment of costs" being read,

Mr. Aglionby proposed that the word "taxation" should be added, which was agreed to.

On the clauses being gone through,

Mr. Stewart proposed the addition of his clause for compensation "to the officers who might be affected by the provisions of the act." He stated that he conceived that the bill would be ineffectual without it, inasmuch as the operation of the act, if properly and effectually carried out, would deprive the Six Clerks and Clerks in Court of a large proportion of their fees, and it was impossible to expect that the Judges would do this unless some means were afforded to the officers for obtaining a fair compensation.

Mr. Pemberton stated that the clause proposed would, in his opinion, be a very useful one. He understood that several of the Clerks in Court had paid large sums of money for their places: He thought it therefore, reasonable that such a clause should be added.

The *Attorney General* agreed that this was a very necessary clause, and would facilitate the carrying out the bill in a complete and effectual manner.

The Bill, with the amendments, was then reported to the House, and ordered to be read a third time on Thursday (the next day).

SELECTIONS FROM CORRESPONDENCE.

ACTION ON A JUDGMENT

The expense a plaintiff is put to in enforcing a judgment obtained in any of the British Colonies against the debtor or his estate in this country is very heavy, as it is absolutely necessary to commence an action of debt here *de novo*, and to proceed thereon as in other cases. It would be a great relief and avoid much delay if an act was passed enabling the plaintiff to call on the defendant by a rule *nisi*, or in some other way to shew cause why exemplification of the judgment in the local court should not be filed, and why judgment should not be entered up in any of the Courts of Record at Westminster in order to facilitate the recovery from the defendant of his estate or effects in this country.

CIVIS A.

WRITS OF JUSTITIES.

Writs of Justices are generally resorted to for the recovery of debts under 40s.; and where it appears the defendant's visible means are too small to satisfy a judgment (if obtained) in the Superior Courts, the expences attending the proceedings by justices (subsequent to the writ) being less by about one half. During my practice, I have been obliged to resort to the writ of justices for the reason before mentioned; but my proceedings have been much retarded in consequence of the length of time which elapses before the writ is sealed, unless the additional fee of *8s. 6d.* be paid for a private seal. I have had to wait nearly a fortnight for a writ, in consequence of there being no public seal. Why should not these writs be sealed at any time as the common writ of summons?

A COUNTRY SUBSCRIBER.

ATTENDING JUDGE'S SUMMONSES.

I notice a letter signed W. W. E., p. 201, *ante*, wherein the writer expresses his surprize that inexperienced junior clerks should be allowed to attend summonses at the Judges' Chambers.

I agree with him that many matters of great moment are discussed there, and numerous applications are now entertained there, for upsetting important and expensive proceedings upon mere technicalities; so that it

requires a talented and ingenious person to cope with the subtlety which is there brought to bear upon these matters.

But inasmuch as a respectable solicitor upon attending summonses is compelled to wait for several hours for a fee of 3s. 4d., is it to be wondered at, that gentlemen moving in respectable circles of society, should prefer attending more important business at their own Chambers, and sending a clerk to attend these matters? I would recommend as a safe course, where any speculative summons is taken out, to instruct a pleader or counsel, who obtains (par excellence) an immediate audience; and although the present rigid mode of taxing costs, would probably exclude such an item from the bill, no client of liberal feelings would grudge paying out of his own pocket a fee advanced in anxious advocacy of his interests.

CIVIS.

SUPERIOR COURTS.

Lord Chancellor's Court.

COSTS.—DISMISSING OF BILL WITHOUT.

Circumstances in which a bill, though the case made by it fails in point of law, may be dismissed without costs by reason of a false defence to it.

The bill in this case was filed in 1837 by the widow and executrix of Mr. C. Field, a solicitor, deceased, for payment of a bill of costs due to him for business done for Mr. Benjamin Churchill, from the year 1826 to 1830. Mr. Churchill also died in or about the year 1830, and by his will directed his debts to be paid out of his personal estate. His widow and executrix, defendant to the bill, by her answer set up, among other defences, the statute of limitations.

Mr. Smythe, for the plaintiff, after stating the facts and admitting that the bill should be dismissed, but, as he hoped, without costs, said the statute of limitations was now a sufficient answer to the case made by the bill; but at the time the bill was filed there was much doubt upon the law in this respect, in consequence of Lord Chancellor Brougham's decision in 1831, reversing a former decision of Sir John Leach, Master of the Rolls, in the case of *Jones v. Scott*,^a and holding that a will in such cases created a trust for the benefit of creditors, so that their demands could not be barred by the statute. The present bill was filed while the law stood as the Lord Chancellor left it in 1831. But in 1838 the House of Lords on appeal, after much delay, reversed Lord Brougham's decree, and set up the decree of the Master of the Rolls.^b In such circumstances, the plaintiff filed her bill, believing she had the law in her favour, and he hoped therefore that the Court would dismiss it without costs. But there was another ground in which

he submitted the defendant was not entitled to costs, and that was that, in addition to the statute, she set up another defence, entirely false, alleging that the plaintiff's husband had not accounted for a sum of 1000*l.* trust money, received by him in his professional character, as part of the purchase money of an estate sold to the Earl of Jersey in 1809. The facts of that transaction were these: Mr. Churchill (defendant's father in law) by his will, devised his estates to his son Benjamin, defendant's late husband, for sale &c., and directed 1000*l.* to be reserved out of the proceeds for the benefit of his daughters, and of that sum he appointed Mr. Benjamin Churchill and Mr. Samuel Churchill trustees. Mr. Samuel Churchill was at that time a solicitor, and for many years in partnership with Mr. Field, and they being the solicitors for sale of the estate, the whole purchase money, amounting to 11,000*l.*, was paid into their hands in the first instance. But Mr. Field retained no part of it, his partner, the co trustee with Mr. Benjamin Churchill, took it; and he afterwards became bankrupt; the partnership was dissolved, and Mr. B. Churchill admitted his liability for the trust money. The proofs in the bankruptcy, the correspondence between the brothers, for procuring which in answer to this defence the plaintiff was put to great expence, and other evidence on the part of the plaintiff, shewed that the defendant well knew that there was no ground whatsoever for this charge, and therefore the defendant ought not to be allowed any costs. The learned counsel then read a large portion of the evidence on the point.

Mr. Richards and Mr. Stinton, for defendant, said that from a letter in the defendant's possession written by Field and Churchill, admitting that they received the trust money, there was good reason to believe that the 1000*l.* was never accounted for, and the fact would in all probability turn out to be so if an inquiry could be directed to the Master, but as the bill must, as a matter of course, be dismissed, no such inquiry could be directed. There was nothing in this case to distinguish it from all others in which, when plaintiffs fail in making out their cases, their bills are dismissed with costs.

Mr. Smythe, in reply, again referred to those facts of the evidence which exonerated Mr. Field from all liability as to the trust money.

The Lord Chancellor was satisfied upon the evidence received for the plaintiffs that there was no ground for the defence set up as to the plaintiff's husband not accounting for the trust money. The evidence was all on her side, and nothing to support the case of the defendant but the letter that was referred to, acknowledging the receipt of the money, while it was proved by several letters on the plaintiff's part that the money was paid over to Samuel Churchill, one of the trustees, and that Benjamin, the other trustee, admitted his liability for it. Had this cause come regularly to a hearing, without being affected by the decision of the House of Lords in the case referred to, the plaintiff would be entitled to a decree

^a 1 Russ. & M. 255; and on appeal 261.

^b *Scott v. Jones*, 4 Clark & Finnelly, 382.

with costs. But in consequence of that decision setting the law right, the bill must be dismissed, and certainly without costs as to that part of the defence alleging the false charges. And indeed he did not consider that he would be doing justice between the parties under the circumstances of the case, if he did not dismiss it altogether without costs.

The bill was ordered to be dismissed without costs.—*Field v. Churchill*, Sittings at Lincoln's Inn, July 25th, 1840.

Rolls Court.

ANNUITY.—PURCHASE BY A TRUSTEE.

Where a person in a fiduciary situation purchases an annuity, acquiescence for several years is not a sufficient ground to prevent the transaction being set aside; and if the grant of the annuity is declared void, the Court will only allow the grantee to claim his original advance and interest, credit being given for the sums received by him on account of the annuity.

The bill in this case was filed to set aside an annuity granted in the year 1812, by the then rector of the rectory of Woolwich, to the late Bishop of Rochester. The facts are so fully stated in the judgment, that it is unnecessary further to refer to them than by stating that the late rector died in the year 1837, up to which time the annuity had been regularly paid, but his successor, the plaintiff, conceiving the transaction to have created an improper charge upon the rectory, shortly after his induction, instituted this suit.

Pemberton, Kindersley, and Forster, for the plaintiff, dwelt particularly upon the terms of the act under which the annuity was granted, and urged that the money being to be raised and expended with the bishop's consent, he was in the situation of a trustee, and was consequently incapable of becoming a purchaser of the annuity; and that with reference to the objection raised by the defendant on the ground of lapse of time and acquiescence, it could not apply to the plaintiff, who only became possessed of the rectory in 1837, and immediately after filed his bill. In support of the first point they cited *Fox v. Mackreth*, 2 Bro. C. C. 427; *Downes v. Grazebrook*, 3 Mer. 200; *Ex parte Lacey*, 6 Ves. 625; *Ex parte James*, 8 Ves. 837; *Ex parte Bennett*, 10 Ves. 392; *Anderson v. Walker*, 13 Ves. 601; *Grover v. Hugell*, 3 Russell, 428; and *Scott v. Davis*, 4 M. & Cr. 87; and in answer to the question of acquiescence, *Malony v. L'Estrange*, 1 Beat. 406; *Hatch v. Hatch*, 9 Ves. 292; *Attorney General v. Clarendon*, 17 Ves. 491; and *Attorney General v. Dudley*, Cooper, 196.

Richards and Heberden, for the defendants, contended, that although the bishop was to judge whether the sum raised was proper for the purposes to which it was applicable, yet it was to be raised by the rector, and the trustees were to see to its application. The bishop might have felt an interest as the patron of the living that the annuity should be raised on

the most advantageous terms to the rector, and this was proved to have been the case by his taking it at a half per cent. less than was offered by any other person; but such a feeling ought not to form a ground of charge against him for a breach of duty. They denied that a trustee could not purchase from his *cetui que trust*, although undoubtedly such contracts were regarded with great jealousy by the Courts, but if the transaction were fair, and there were no reason to impute improper conduct to the trustee, it was too much to say that a purchase from his *cetui que trust* would be declared void. All the authorities referred to on the other side were cases where trustees had purchased from themselves, and they were also purchases of lands, and proceeded upon the principle that a trustee, from his superior knowledge of the property, might take advantage of circumstances that might not be known to any other person. In this case nothing could be concealed, for it was the purchase of an annuity of a stipulated amount. The length of time also since the completion of the purchase was not to be lost sight of. *Howard v. Ducane*, 1 Turn. & Russ. 81; *Coles v. Tregothick*, 9 Ves. 244; *Clarke v. Swale*, 2 Eden, 134; *Campbell v. Walker*, 5 Ves. 678; *Moth v. Atwood*, 5 Ves. 845; *Morse v. Royal*, 12 Ves. 355.

The Master of the Rolls.—The bill is filed for the purpose of setting aside an annuity charged upon the rectory of Woolwich. It appears that in the year 1809, it being desirable that a new rectory house should be erected, an act was obtained in that year, authorizing certain things to be done with the consent of the bishop of the diocese. The powers contained in this act not being found sufficient, a second act was obtained in 1812, whereby a sum of 2,000*l.* was authorized to be raised by way of annuity on one or two lives. The money raised was to be placed in the hands of the trustees appointed by the act; and the mode of its expenditure was to be subject to the approval of the rector, whose consent was also necessary to the sale of the annuity; but the bishop had also most important duties to perform. He was entrusted with the protection of the see, the living being in his patronage, and also with the interests of the rectory, in taking care that any successor of the present incumbent should not be injured by the manner in which the provisions of the act should be carried into execution. The application of the monies raised was likewise to have the bishop's sanction, and the accounts kept by the trustees were to be rendered to the bishop, and approved of by him; and if any surplus remained after the expenditure directed, it was to be applied for the benefit of the rectory with the consent of the bishop. The last act having passed in the year 1812, towards the end of that year the rector proposed raising an annuity for two lives. He communicated to the bishop certain proposals that had been made to him for an advance of the sum required on an annuity which should yield the purchaser 9 per cent; but the bishop conceiv-

ing that rate too high, and that he was not to give a blind consent, expressed himself to that effect to Mr. Fraser, and in consequence the treaty then pending was suspended. It is to be inferred from the correspondence that the bishop thought he might be able to induce some person to advance the sum required at a less price; and acting from the most meritorious motives, there is little doubt that he had found some friend whom he expected to make the advance at 8½ per cent. Not the least sinister view can be imputed to him for thus acting—fraud and contrivance are out of the question. Afterwards the bishop unfortunately thought that it would not be a bad thing for him to take the annuity at that price, but still no sordid views can be charged against him, for his letter shews that if the amount could be raised at a lower price, he was quite willing to give way to another purchaser. The bishop, in announcing his determination that he would take the annuity at that rate, felt that there would be some difficulty, for it was found on referring to the act that he would be a necessary party, and he wished to have his son's name substituted for his own as the purchaser, but that not being considered desirable, the name of Mr. Venables was ultimately put into the deed. The question, then, was not whether there was fraud, or no fraud; but whether, having all these powers, and with such important duties, the bishop could make himself an interested party by becoming the purchaser of this annuity. The principles upon which the Court is to act are clearly stated in *Ex parte Bennett*. It is necessary for the Court to declare that such transactions should be void altogether, because the Court cannot see into all the circumstances which may exist in each particular case. The Bishop, at no very long period after his purchase, was apprized of the difficulty of his situation. Counsel's opinion was taken, which explained the questions that might thereafter arise, and he was therefore placed on his guard, so that if he made proper provisions in consequence, no great inconvenience could ensue. As to the time which has elapsed since the grant of the annuity, it is to be observed that it can only be deemed to run from the present act; and the bishop is not only a trustee for the rectory during the present incumbency, but for Mr. Fraser's successors; and if Mr. Fraser is so connected with him in this matter as to be in some degree under his influence, subsequent incumbents ought not to be affected. The question, then, is whether, consistent with the rules of law, this is a transaction which can stand; and being of opinion it cannot, the next consideration is what is proper to be done. It is stated that the bishop, and those claiming under him, have received the 2000*l.*, and all interests which would have accrued upon it; and the debt having thus been repaid, the annuity ought to cease. The annuity deed must therefore be delivered up.

Greenlaw v. King, July 4th and 6th, 1840.

Queen's Bench.

[Before the Four Judges.]

CHURCHWARDENS, ELECTION OF.—RECTOR.

The right of declaring an adjournment in the case of a meeting of the parish for the election of churchwardens, and of appointing the time and place of continuing such election by a poll, is in the rector.

In this case a *mandamus* had been obtained for a new election of churchwardens. The facts of the case and the points raised in argument, are sufficiently set forth in the judgment.

Lord Denman.—This was a case in which a rule had been obtained for a *mandamus* to the defendants, to proceed to a new election of churchwardens, on the ground that the last election had been illegal. The objection to that election was, that a shew of hands having taken place at the parish vestry, the rector had on demand, granted a poll, and directed that it should be held, not immediately, but on three days following that on which the vestry was held; whereas it was said that he ought to have taken the opinion of the meeting at that moment as decisive of the election. In the opinion of the Court, the rector, not only as the head of the parish, in his character of rector, but as the owner of the freehold of the church where the meeting was held, had a right to preside over the meeting and to direct its proceedings. The provisions of the 58 G. 3, are sufficient to decide the question; that act does not contain any enactment conferring on the rector the power to preside, but recites, that where no provision has been made by law to direct who should be the chairman of the meeting in the absence of the rector, and it then proceeds to supply that defect, so that it clearly proceeds on the assumption that the right to preside is in the rector. It was clear, therefore, that the acknowledged right must be treated in law as vested in him. Then comes the question how he is to exercise the powers thus confessedly existing in him. First, as to the poll; the inhabitants in vestry assembled, have no power to grant or refuse a poll. In the present instance, a poll was demandable of right, and neither the meeting nor the chairman could refuse the demand for one. Then, as to the mode of taking the poll, in the absence of other business the poll ought to be proceeded with immediately, but if there should be other business before the meeting, an adjournment of the poll would become necessary and inevitable. Then it is supposed that not the chairman, but the majority of the meeting has the right to determine whether there should be an adjournment of the poll, and to what time and place the poll should be adjourned. There may be a division on the question of adjournment; but suppose that the majority should decide in favour of the adjournment, there may then be another question as to the time and place of the adjournment. But suppose that the majority should altogether refuse the adjournment, many persons must stay up all night, or their votes would be lost. These

are some of the inconveniences of making such matters merely dependant on the decision of a majority. There are many large places in the kingdom where occurrences of this sort might constantly happen, and the inconvenience of acting on such a rule is therefore most manifest. But setting aside this great objection (on the score of convenience) to the principle that the right of deciding on the adjournment is in the parishioners, the Court is of opinion that the person who presides over the meeting has the right to decide on these questions, and to state what the proceedings shall be, so as to ensure to all the persons in the parish entitled to vote, a reasonable opportunity to give their votes. That person will exercise the right he thus possesses under the responsibility of being called on in this Court to answer for his conduct. One other matter remains to be considered. It has been objected that the rector having the casting vote under the 53 G. 3, may under certain circumstances, be able to appoint both the churchwardens. That possibility will not alter the construction of the statute, nor the right of the rector to act upon his discretion in the mode of conducting the election; it is not necessary for the Court to enter into any particular discussion of the cases cited. It is true that there are no cases which go to the full extent of this case, but they all point the same way. The case of *Houghton v. Reynolds* has been attempted to be carried too far, and it ought not to be pressed to the consequences to which it has sometimes been pressed. It does not decide that the rector is the person to perform the substantial duties of the meeting, but that he has the right to direct the mode of its proceedings, subject always to responsibility to this Court for the conduct which he pursues in the exercise of his undoubted power. The rule in this case must therefore be discharged.

Rule discharged.—*The Queen v. The Rector of Lambeth*, T. T. 1840. Q. B. F. B.

BILL OF EXCHANGE.—PLEADING.—JUDGMENT NON OBSTANTE.

A plea in answer to a declaration in the common form on a bill of exchange, averred that the bill was accepted in payment of a debt to F. (the drawer); that F. indorsed it in blank, and delivered it to the plaintiff as agent for R., and in payment of a debt due from F. to R., and that the plaintiff in violation of his duty, retained the bill. After verdict for the defendant, the Court held this plea a sufficient denial of the ordinary allegations in the declaration of an indorsement to the plaintiff.

The Court will not direct a judgment non obstante verdicto, except in a clear case, where the party in whose favour the verdict has been given has no merits.

This was an action by the indorsee against the acceptor of a bill for 200*l.* The defendant pleaded that he accepted the bill in payment of a certain sum of 200*l.*, owing to one F. (the

drawer,) in consideration of a sale by F. to defendant of part of a mine; that at that time F. owed R. the sum of 900*l.* as purchase-money for the said mine; that F. indorsed the bill in blank and delivered it to the plaintiff as the agent only for R., and for the purpose of being given to R. in part payment of the 900*l.*, and without any other consideration; that the plaintiff, in violation of his duty as such agent, and in fraud of R., retained the bill to his own use, and that R. dissented from the bringing of the action, and had required the defendant not to pay the plaintiff. Issue was taken on this plea. There was a verdict for the defendant, and a rule had since been obtained to enter judgment for the plaintiff *non obstante verdicto*, on the ground that the plea did not afford an answer to the action.

Mr. Crompton shewed cause against the rule.

Mr. Walsby was heard in support of it.

Cur. adv. vult.

Lord Dehman, on the 24th of June, delivered judgment. After stating the circumstances under which the case now came before the Court, he said,—It has been contended that this plea does not admit the indorsement from the drawer to the plaintiff, and might for that reason be bad upon special demurrer; but it states that he indorsed it in blank, and delivered it to the plaintiff as agent for R., to be delivered to R. in part payment for a debt, and that it came into the plaintiff's hands without any other consideration. Now the declaration had averred that the defendant had indorsed the bill to the plaintiff: that may be either by a special indorsement or by an indorsement in blank. In the latter, if not in the former case, there must be a delivery to the person to whom it is so indorsed, and for his use. But the plea here avers that there was an indorsement in blank, and a delivery to the plaintiff, not as indorsee, but as agent for another person, and that he without consideration and in violation of his duty, retained the bill. We think that this is a constructive denial of the indorsement to the plaintiff as stated in the declaration, and that it is good in this state of things. It is a rule that a judgment *non obstante verdicto* can only be entered in a clear case, and when the party in whose favour the verdict has been given has not a good title on the merits. As that is now here, the plea must be treated as good, and the rule must be discharged.

Adams v. Jones, T. T. 1840. Q. B. F. J.

Exchequer of Pleas.

COSTS.—JUDGE'S CERTIFICATE UNDER 43 ELIZ. C. 6.—TAXATION.—LACHES.

If a judge intimates his intention to certify under 43 Eliz. c. 6, to deprive the plaintiff of costs, the costs should not be delivered out until the certificate has been given, and a taxation which takes place notwithstanding in favour of the plaintiff, may be set aside.

Manuel moved for a rule to shew cause why two orders made in this case should not be set

aside. It was an action of trespass for assault, battery, and false imprisonment, to which the defendant pleaded not guilty. The cause was tried before Mr. Baron Gurney, and the jury found for the plaintiff, with one shilling damages. Application was then made to the learned judge on behalf of the defendant to certify to deprive the plaintiff of costs under the 43 Eliz. c. 6, s. 2. His Lordship stated his intention to certify. The plaintiff, four days after the trial, obtained the *postea*, indorsed "Verdict for the plaintiff, one shilling; costs, forty shillings;" but there was no certificate. Notice of taxation was given, and the defendant's attorney attended, but applied to the Master to put off the taxation, in consequence of what had occurred at the trial. The Master, conceiving he had no option, taxed the costs, which were paid under protest. On an application to Mr. Baron Gurney on the 16th of May, he made the following order: "I order that the plaintiff's attorney forthwith produce before me the record of *nisi prius* and *postea* in this cause, for the purpose of indorsing thereon any certificate, pursuant to the statute 43 Eliz. c. 6, s. 2; that the taxation of costs herein be set aside; that it be referred back to the Master to review his taxation with reference to the above-mentioned certificate; that the judgment signed be altered as to the payment of costs; and that the plaintiff refund to the defendant the sum of 20l., part of the damages and costs paid under protest." On the 22d of May the learned judge made another order, confirming the former one, except that the defendant should pay to the plaintiff such costs as the plaintiff had incurred by reason of the defendant not having applied to the associate to draw up the order before judgment was signed and the costs taxed. No costs on either side, of the application to amend the former order.

Mansel contended that, under the statute 6 Edw. 1, c. 1, the plaintiff is entitled to full costs unless a certificate be granted under the statute of Eliz., and such certificate ought to be granted before judgment given.

Alderson, B.—Your point is, that there can be no certificate after taxation.

Mansel cited *Whalley v. Williamson*.^a

Alderson, B.—That case relates to the power of revoking a certificate once given.

Mansel.—In *Godson v. Lloyd*,^b it was moved to enter a suggestion under the London Court of Requests' Act, and leave was granted on the ground that costs had not been taxed. The defendant has been guilty of laches in not applying to the judge for his certificate earlier. He also cited *Hedit v. Lucock*.^c

Cole, who appeared to shew cause in the first instance, was stopped by the Court.

Lord Abinger, C. B.—The delivery of the *postea* is supposed to be by the authority of the judge, and the clerk ought not to have delivered it without first ascertaining whether the

judge intended to carry into effect his intention of certifying, as intimated at *nisi prius*.

Rule refused.—*Davis v. Cole*, T. T. 1840. Exchb.

JUDGMENT BY DEFAULT.—SPECIAL CONTRACT.—NOMINAL DAMAGES.

Where a declaration in assumpsit claimed a specific sum pursuant to a contract, and judgment was suffered by default, the plaintiff was held entitled to recover the sum so mentioned without producing any evidence.

This was a motion to set aside an inquisition, on the ground that the plaintiff was not entitled to more than nominal damages, it not having been proved that damages to a greater amount had been sustained. The action was in *assumpsit*, and the first count of the declaration was upon an agreement between the plaintiff and defendant, by which the defendant agreed to pay to the plaintiff the sum of 20l., for assisting the defendant in obtaining a situation as a traveller, and for becoming bound with him as a surety upon his entering on his situation. There were also counts for work and labour, and on an account stated. Judgment went by default, and on the execution of the writ of inquiry, it was insisted on behalf of the defendant, that evidence ought to be given by the plaintiff to shew some particular sum to be due; but the secondary was of opinion that the judgment by default admitted 20l. to be due, and that the jury must give a verdict for that sum, without any evidence on the part of the plaintiff, and a verdict was taken accordingly.

Parke, B.—The first count sets out an agreement, by which the defendant promised, upon certain considerations, to pay to the plaintiff 20l., the phrase is "the sum of 20l." In strictness, a verdict for 20l. should have been taken on the special count, and nominal damages on the rest of the declaration. The point is perfectly clear, and there must be no rule.

Rule refused.—*King v. Beak*, T. T. 1840. Excheq.

COSTS OF THE DAY.—STATING PROCEEDINGS.

Although it appears probable that the defendant may not be able to get easily his costs of the day from the plaintiff for not proceeding to trial, the Court will not grant a stay of proceedings on that account.

In this case *Raeclinson* moved for the costs of the day, and that all proceedings might be stayed until the costs were paid. On the cause being called on for trial the plaintiff withdrew the record, in consequence of not being prepared to try. The affidavit in support of the application stated the action to be brought for an alleged trespass in turning the plaintiff out of his house, that he would have been indicted

^a 7 D. P. C. 253. ^b 4 D. P. C. 157.
^c 2 D. P. C. 247.

for keeping a disorderly house if he had not left it. The affidavit then went on to state that it would be difficult for the defendant to get his witnesses together again, one of whom resided in Cheshire; that from the condition of the plaintiff, the defendant had no chance of getting his costs, and that the alleged cause of action was unfounded. Several days' notice of the motion had been given.

Parke, B.—The rule may be made absolute without a stay of proceedings. You may have an attachment for non-payment of costs. That is your remedy.

Rule accordingly.—*Aime v. Chinnock*, T. T. 1840. Exch.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

4th August, 1840.

Regency.
Assessed Taxes.
Parliamentary Boroughs.
Poor Law Commissioners.
Insane Prisoners.
Turnpike Trusts.
Turnpike Acts Continuance.
Settled Estates Drainage.

House of Lords.

Rating Stock in Trade.
[In Committee.]
Highway Rates.
[In Committee.]
Ecclesiastical Courts.
[In Committee.]
Ecclesiastical Duties and Revenues.
[In Committee.]
Law of Principal and Factor Amendment.
[For second reading.]
For improving Grammar Schools.
[In Committee.]
Parliamentary Boroughs.
[For third reading.]

Bills passed.

Usury on Bills of Exchange.
Imprisonment for Debt Act Amendment.
Admiralty Court.
Non-parochial Registers.
Administration of Justice in Chancery.
Marriages Registration Act Amendment.
Notice of Elections.
Attorneys and Solicitors (Ireland).

Postponed.

Parochial Assessments.
Affirmations.

House of Commons.

Small Debt Courts for
Liverpool,
Marylebone,
Wakefield Manor.
To extend the Term of Copyright in Designs
of Woven Fabrics. Mr. B. Tennant.
[In Committee.]
To extend Freeman and Burgesses' Right of
Election. Mr. F. Kelly.
To consolidate and amend the Law of Sewers.
[In Committee.]
Imprisonment for Debt Act Amendment.
[For third reading.]
Usury on Bills of Exchange.
[For third Reading.]
For the further amendment of the Poor Law.
[For second reading.]
Registration of Voters.
[For second reading.]
Right of Voting.
[For second reading.]
Insane Prisoners.
[For second reading.]
Prevention of Bribery.
[For second reading.]

Bills passed.

Parochial Assessments.
Notice of Elections.
Highway Rates.
Ecclesiastical Courts.
Court of Chancery.
Non-parochial Registers.

Postponed.

Small Tenements.
Bribery Prevention.

THE EDITOR'S LETTER BOX.

We think in the case put by "Miles," that *B.* would be a good witness, and certainly might be rendered so by a release from *A.*

We agree with "A Student," that the sentences in the cases he refers to were of very unequal severity. His letter would be a very fit one for the daily newspapers, but is scarcely suited to our pages.

"A Barrister" is informed that a reply to his communication has been left with the publisher.

The letters of R. G. W.; ♀; and a Solicitor, have been received.

The letters on Transfer of Mortgage Stamps, and the power of a Justice of the Peace, shall be inserted.

Several letters are deferred to admit the Debate on the Chancery Bill

The Third Part of the Quarterly Digest of all reported Cases, will be published next Saturday.

The Legal Observer.

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SATURDAY, AUGUST 15, 1840.

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———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE ACT FOR FACILITATING THE ADMINISTRATION OF JUSTICE IN CHANCERY.

WHEN, after a long and tedious voyage,—now in a dead calm—now opposed by baffling winds, and in sight of land all but wrecked and swallowed up,—the good ship is at length brought safe into port, although somewhat shattered and distressed,—great is the joy and congratulation which warm the hearts of all concerned in her;—owners, navigators, and passengers. So we, having watched with the utmost interest the Chancery Bill, in all its stages, having seen it fairly launched, amid great congratulations,—tossed to and fro' on the second reading,—then becalmed in the Select Committee of the Lords,—arriving in the Commons, and there encountering almost entire annihilation,—still, when at the very moment we thought all was lost, we find that, although much reduced and curtailed, the bill which we have got is a good bill, and now ripened into an act;—we hasten to express our joy, and to congratulate all concerned,—legislators, practitioners, and suitors,—that the session has not closed without some relief for them. Indeed, we are not sure whether it be not better for the latter that this bill should pass in the first place, that it should be ascertained what can be done to expedite the other stages of the cause, before the judicial power be increased. The bill which was withdrawn would have expedited the *hearing* of causes, but it would have done nothing more that may not be accomplished under the bill which has passed; and if this bill is acted on, as we have no doubt it will be, with the sincere desire to render it ef-

fectual, a very great deal indeed may be done towards effecting the proper and necessary reform in the pleadings,—in the mode of taking evidence, and above all, in the offices of the Court of Chancery. We shall go into this from time to time, when we have the act, but at present we cannot deny ourselves the pleasure of making some extracts from the debate of Wednesday the 5th of this month,—a day which will be ever memorable to Chancery Reformers, as having witnessed, in our opinion, by far the most important discussion on this subject which ever took place.

The Attorney General very briefly stated the operation of the bill. Mr. Pemberton then addressed the House, and although his exposure of the abuses of the Court will have but little novelty to our readers, yet it is conveyed in language so pointed and elegant, and comes with such authority from him, as one of the leading advocates of the Court, that we shall make some pretty long extracts from his speech. After going at some length into the present want of judicial power, and the denial of justice from the impossibility of obtaining a hearing of causes when ripe for hearing, (which we shall for the present pass over), he then went into the evils which might be remedied by the bill before the House. He first suggested an improvement in the mode of hearing counsel, which is worthy attention:—

"There were evils which the bill would enable the Lord Chancellor to correct (if not, he should wish the bill to be recommitted in order to enable him to do so), not only with reference to the pleadings and mode of taking evidence, and all the details of the proceedings, but also with respect to the different officers through whom the business of the Court of Chancery was transacted. He believed that

a great deal of time that was now wasted, and a great deal of delay and expense might be saved by alterations of the practice of the Court of Chancery, and that many matters which were now disposed of by counsel only might be equally well disposed of, if not better, by petitions being sent to the judge, with consent of parties, without the intervention of counsel at all. Another very great improvement might be made by adopting in the Court of Chancery the rule of law adopted in the House of Lords and at the Privy Council, of hearing only two counsel on one side in any cause. In fact, in the House of Lords only one counsel was heard; in addressing a jury only one was heard; but in the Court of Chancery, however trifling the question, you may have as many counsel as you think fit to instruct. He had known the same point argued by seven or eight counsel in succession, no two of them having heard those who went before, and consequently going over the same ground."

Mr. Pemberton next went fully into the present grievance of the Six Clerks and Sworn Clerks, which, although often adverted to before in these pages, cannot be too often repeated until it is remedied.

"In ancient times there were officers in the Court of Chancery called the Six Clerks, by whom, as solicitors, all the business of that Court was transacted. Each of these Six Clerks had a certain number of clerks assigned to him, who were called Sworn Clerks. A great change had, however, taken place in the duty of these officers. There were now six Clerks in Court, and what was their duty? The only business he was able to discover was keeping papers in their office in Chancery Lane, where bills and answers were filed. This was all the duty required of these gentlemen, and he had no intention to blame them, or any human being; he only pointed out abuses, that the hands of the Lord Chancellor might be strengthened to remedy them. One of them attended on behalf of plaintiff and defendant in suits going on through the year, and the duty he had to perform was this, if he was for the plaintiff, he signed his own name to the bill, and if for the defendant, he signed his name to the answer; and, as this was a mere matter of form, he signed the name of another clerk as *per proc.* for the other party. That was the only duty he performed; the authenticating was nothing, it was a mere form, and it required his attendance for a certain number of minutes in the office in Chancery Lane. With respect to the Clerks in Court, he believed they did less than the Six Clerks; he believed they did literally nothing, though their receipts were to a large amount. What did they do? If he had to serve a notice on the solicitor of an adverse party, he was obliged to send his notice to the Clerk in Court, who sent it to the adverse solicitor, so that, instead of sending the notice direct to the adverse solicitor, he had first to send it to Chancery Lane, and then it went to the office of the ad-

verse solicitor. For this duty, what did the house suppose the clerks received, and the suitors in the Court of Chancery *de anno in annum* paid? The returns had been often called for, and had at length been produced, after long delay. He had described the duty of those gentlemen, and the House would wish to hear the sums paid for this duty, or absence of duty, by the unhappy suitors. The detailed returns of last year shewed the amount of fees received by those officers for doing nothing to be 59,971*l.* 7*s.* 7*d.* How did this arise? There was 27,600*l.* for copy-money paid for copies of records, with respect to which the Six Clerks performed the important duty he had described to the House, and for which the suitors were taxed to this extent. A calculation had been lately made in the Master's office of what was a fair remuneration for making copies, and 1*½* a folio (of ninety words) was considered to be a fair remuneration, and allowed to the Masters' clerks as such. Their returns had been made, and it appeared that they derived a clear profit of 300*l.* and 500*l.* a-year from a charge of 1*½* alone. And what did the House suppose was the rate of charge for copy-money made by those officers? 10*d.* per folio! of which 3*d.* went to the Six Clerks for writing their names, 6*d.* to the sworn Clerk in Court for doing nothing, and the other penny he presumed went to the person who actually made the copy. Another item was "Term fees," of which there were 42,999 in the last year (1839). These fees were paid in consequence of the delay of the 700 causes, because, independent of other difficulties, for which the suitor was not responsible, there was a deficiency of judicial assistance. The term fee was 6*s.* 8*d.*, paid merely because the term had passed, and 42,999 produced 14,333*l.* Another of the items was 9,444*l.* 10*s.* for taxing costs; so that the only thing for which the Six Clerks were paid, in which they had something to do, was a duty which did not belong to them, for nothing was more usual than a reference to the Master to tax costs, and it was one which ought to be discharged in the Master's office. The only duty really done by the Six Clerks was, therefore, one which ought to be done elsewhere; and 59,971*l.* was paid to them. The House had heard of sinecures; had the House or the hon. member for Kilkenney ever heard of a sinecure clerk—of a clerk receiving 8,000*l.*, 9,000*l.*, or even 10,000*l.* a-year? The gross sum received by one of these individuals amounted to as much as 10,879*l.*, and when the requisite deductions were made from that income, it would appear that his clear receipts did not amount to less than 9,200*l.* a-year. Another received as much as 9,645*l.*; a third 8,130*l.* Was it fitting that such a state of things should continue, and that the Queen's Government should be lukewarm with respect to a measure which tendered the power of redressing these enormous grievances? It was true that an addition had been made to the duties of the Six Clerks by the statute taking away fines and recoveries; but would it be for a moment said

that anything of the sort afforded any mitigation of the monstrous evils of the Court of Chancery?

He next made the following statement respecting the Master's Office:—

"If they only looked at the delays in the Master's Offices, they must see that in the present condition of the court speedy justice could not be obtained for the suitor. In the days of Pope and of Swift the delays of the Court of Chancery were the object of their bitterest satire; but from the returns before him the delays in the Masters' Offices at the beginning of the last century were as nothing. The delays in the court were nothing, for he considered an arrear of twenty or thirty causes at the end of a term as nothing; yet the public heard of delay in Lord Hardwicke's time, and the house must know that it had been made the subject of many loud and grievous complaints. They must also know that in the present state of the Court of Chancery its officers were not supplied with any motives for exertion. The Lord Chancellor possessed no power over them; they were not under the controul of the House of Commons: they were stimulated by no reward; they could obtain no credit for diligence; they incurred no censure for neglect; they had nothing to hope, nothing to fear: there was not one of the regulations in the Court of Chancery relating to the Masters' office which did not allow them to do just as they pleased. It was true that the return before the house shewed their attendances at their office, but did not shew the business which they did, and surely it would be admitted, that if they were fully occupied for the whole of the six hours during which they attended, no man would say that that could be considered sufficient, seeing that the offices of the Court of Chancery were choked with business. Their duty in part related to matters of account, and would any one say that an efficient mode of settling an account was by giving half an hour at a time to it at intervals of months. (Hear, hear.) The Court of Chancery was now about to adjourn, and he did not for his part hesitate to say, that such adjournment, taking place at this period of the year, could not but be considered too early an adjournment, and that its effect must be the postponement of a vast mass of urgent and important business. (Hear, hear.) It was well known that as much of the time of a judge was given to the business of Chancery out of court as in court; but the case was widely different with the Master; the whole of his business was done in his office, and ninety-nine out of one hundred and eight of his reports were made up by his clerk. The Masters of the Court of Chancery were chosen from amongst the members of the outer bar. If any of these gentlemen hoped to realize 2,500*l.* a-year by his profession, it was well known that he must give more than double the time to its duties than the Master did to those of his office."

We here, for the present, conclude our

extracts; but the value of this speech is very great, when we remember that Mr. Pemberton considers that the reform of the grievances to which he has thus so clearly adverted may be effected under the measure which is now the law of the land.

We shall take another opportunity of referring to the important speech of Lord John Russell, as to the separation of the judicial and political functions of the Lord Chancellor. We have wished to confine the present article to the Reform which can be effected under the bill which has passed in the present session; but we shall not lose sight of the other parts of the subject.

PRACTICAL POINTS OF GENERAL INTEREST.

AFFIRMATION.

SEVERAL acts have recently passed relieving persons having conscientious objections to taking an oath. See 9 Geo. 4, c. 32; 3 & 4 W. 4, c. 49; 3 & 4 W. 4, c. 82; 5 & 6 W. 4, c. 62; 7 & 8 W. 4, c. 34; 1 & 2 Vict. c. 15. That some further provision, however, is necessary, is shewn by the following case. This was an indictment for a highway robbery, tried before Mr. Justice Patteson at the Spring Assizes, 1838, for South Lancashire. The prosecutor, John Atkinson Simpson, being called, it was proposed to him to make the affirmation usually made by Quakers, under the statute 9 Geo 4, c. 32. The counsel for the prisoners interposed, and questioned the witness, who said as follows:—"I was a member of the Society of Friends until within fifteen months. Then there was a difference amongst us on points of doctrine. I am one of those who separated. I am still of the same opinion with the Friends as to taking an oath or making an affirmation, and on many other points. I am not now a Quaker. We have taken the name of Evangelical Friends. They call themselves Friends. I am not now a member of the Society of Quakers. The world, I believe, calls us Quakers; but I have a difficulty in saying that I am a Quaker after the difference of doctrine and separation. There are many doctrines in which I agree with the Friends; in some particular doctrines, which are distinguishing ones, I differ; one is, as to the rite of baptism: they do not hold it a sacrament, I do. The great point of difference is, the influence of the Spirit, the inward light; that is a leading doctrine.

They hold that every man has sufficient in himself; we, that the Bible is the guide; that is a leading doctrine. Also, we differ as to reading the Scriptures in our meetings. We are generally addressed as if we were Quakers: still I cannot say that I am a Quaker at all; I am but a Moravian." It was contended by the counsel for the prosecution, that the witness might affirm, either under 9 Geo. 4, c. 32, or under 3 & 4 W. 4, c. 49. That the question under the former act is not whether the witness considers himself a Quaker, but whether he is in fact a Quaker; and that in this case it was sufficiently shewn that he was in fact a Quaker. That under the latter act two forms are given,—“I, A. B., being one of the people called Quakers, &c.,” or, “I, A. B., being one of the persuasion of the people called Quakers.” And that the latter form, being different from the former, probably meant to include all persons who hold the same opinion with regard to the lawfulness of an oath and the obligation of an affirmation, as the Quakers, and that the witness professed to hold the same opinion. The learned Judge put it to the witness, whether he would affirm in the form first given by 3 & 4 W. 4, c. 49, *viz.* “I, A. B. being one of the people called Quakers.” The witness refused. The learned Judge put it to him, whether he would affirm in the form secondly given, *viz.* “I, A. B., being one of the persuasion of the people called Quakers.” The witness refused, saying, that he could not see the difference; that he considered the word persuasion to mean “sect.” The learned Judge put it to the witness, whether he would make the affirmation in the form given by 3 & 4 W. 4, c. 82, touching separatists. The witness said, “I am not of that sect,” and refused. The learned Judge asked whether he would take an oath. The witness refused. The witness then said, “I am not a Quaker, but I have no objection whatever to make the affirmation in the terms, “I, A. B., do solemnly, sincerely, and truly affirm and declare, &c.,” and if I do so affirm, I hold it binding upon my conscience.” The learned Judge admitted the witness, and upon his evidence the prisoners were convicted; but judgment was respited, in order to take the opinion of the Judges, whether, under these circumstances, the witness ought to be considered a Quaker, within the meaning of the statute 9 Geo. 4, c. 32. The case was considered in Easter Term, 1838, by all the Judges, except *Vaughan, J., Gurney, B., and Williams, J.,* and they were unani-

mously of opinion that the witness was not admissible, and that the conviction was therefore wrong. *Reg. v. Doran, 2 Moody C. C. 37.*

CHANGES IN THE LAW

IN THE LAST SESSION OF PARLIAMENT.

No. VIII.

REGULATING PRISONS.

3 & 4 Vict. c. 25.

An Act to amend the Act for better ordering of Prisons. [3d July, 1840.]

2 & 3 Vict. c. 56.—*Certain parts of recited act repealed.*—Whereas by the statute passed in the last session of parliament, intituled, “An act for the better ordering of prisons,” it is among other things enacted that the prisoners of each sex in the gaols and prisons therein mentioned shall be divided into the classes therein also mentioned and set forth, and that debtors in those prisons in which debtors may be lawfully confined shall form and constitute the first of such classes: And whereas in and by such statute it is also enacted, that certain rules and regulations therein prescribed and set forth shall be observed in every prison in England and Wales in addition to and in amendment of the other rules and regulations which are in force in such prisons: And whereas it is expedient that such of the said rules and regulations only be applied and observed, in regard to such first class of prisoners, as shall be made by the persons authorised by law to make rules and regulations for the government of the said gaols and prisons, and approved of by one of her Majesty’s principal Secretaries of State: And whereas it is expedient that in every gaol, house of correction, bridewell, and penitentiary in England and Wales a further subdivision be made of prisoners convicted and not sentenced to hard labour: Be it therefore declared and enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said act as renders the rules, orders and regulations therein prescribed and set forth applicable to debtors shall be repealed.

2. *Regulations respecting debtors and persons convicted of misdemeanours.*—And be it enacted, that in every prison in which debtors may be lawfully confined the persons authorised by law to make rules and regulations for the government of such prison shall, with the approval of one of her Majesty’s principal Secretaries of State, make such rules, orders, and regulations for the good management of the debtors confined therein as shall by them from time to time be regarded as fit and necessary; and that in every gaol, house of correction, bridewell, and penitentiary in England and

Wales prisoners convicted of misdemeanors and not sentenced to hard labour shall be divided into at least two divisions, one of which shall be called the first division, and that separate rules and regulations shall be made for each division, and that the rules enacted by the said Act of the last session of Parliament shall not apply to the said first division; and that whenever any person convicted of misdemeanor shall be sentenced to imprisonment without hard labour it shall be lawful for the Court or Judge before whom such person shall have been tried to order, if such Court or Judge shall think fit, that such person shall be confined with the prisoners of the said first division; and no prisoner respecting whom no such order shall be made shall be confined with the prisoners of the said first division.

3. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

NOTICES OF NEW BOOKS.

Adventures of an Attorney in search of Practice, or a Delineation of Professional Life. Second Edition, 1840. Saunders and Otley.

WE noticed somewhat fully the first edition of this book,* and our pages being peculiarly devoted to all matters of professional interest, we gladly call the attention of our readers to this second edition, from the preface to which we extract the following account of the lawyers of the present age, who have been distinguished in the field of literature.

"It is a singular fact, and argues very little for any natural affinity between elegant learning and legal study, that there is no profession which has produced so few votaries to the muses. Serjeant Talfourd himself is almost an isolated exception to the general rule. In ancient times, when our lawyers were frequently taken from the church, we find many distinguished writers among them, but excellence in the *belles lettres* is now scarcely admitted to be compatible with the gravity of our courts of law. Mr. Basil Montagu, Mr. Adolphus, junior, Mr. Merivale, and Mr. Warren, have occasionally stolen a ramble in more flowery fields, and most undoubtedly such men as Mr. Baron Alderson and Mr. Baron Maule need not the evidence of exotic fruit to prove the fertile 'superiority' of their minds. Many there are, and barristers by profession, who have attained no slight celebrity for general learning, but they are men who have seceded from Westminster Hall in disappointment or disgust; outlying deer, who have separated from the common herd, and the heavy pinguiferous meadows in which they feed, to find for themselves more cheerful pas-

turage in less frequented and more enchanting scenes. The late Mr. S. G. Price, with whom, in earlier days, I enjoyed an intimacy, that like too many others was involuntarily interrupted by calls of duty into devious paths of life, was scarcely more distinguished by his high and honourable character, than by the varied extent of his classical research. Sir Robert Grant was not less remarkable for his literary attainments, carrying off the chief honours both of college and the senate house, in equal and noble competition with his brother, Lord Glenelg. Sir James Mackintosh's literary celebrity will long survive the memory of his legal attainments, and the fame of this elegant historian will co-exist with the interest of the events that he records. Mr. T. B. Macaulay, in days of early infancy exhibited all that brilliancy of talent, and insatiable thirst for elegant knowledge, by which he has indeed established a 'visible superiority' to every class, and almost every member of the profession that he judiciously abandoned. Bowdler and Horner died before my judgment was sufficiently matured to estimate them, but he can have moved but little in the circles of polished life who requires to be reminded of the large measure of similar distinction which they enjoyed when living. The same may be said of Mr. Praed, whom, however, I only personally knew as a political opponent. His Cambridge reputation, though scarcely sustained by his parliamentary career, shone in formidable, if unsuccessful rivalry with Macaulay's. Nor will the distinguished circle in which he is best known, excuse me for omitting in this bright catalogue of literary merit, one, who with more grave and accumulated demands on his time and talent than the most successful leaders at the bar, has still achieved for himself an honourable place in the galaxy of modern literature: I allude to Mr. James Stephen. If I pass over Lord Brougham, it is only because he does not seem to fall within the class, but stands in the unique position of being at once a lawyer and an accomplished writer: he is indeed an exception, and often a splendid exception to all rule.^b

"I could extend the list, but I have enumerated sufficient to illustrate my position, that in all these and the like instances, it is not by barristers as such, but rather as such no longer, that any just pretension to literary eminence is acquired. Where there is no competition there can be no 'visible superiority,' and I readily admit that my own branch of the profession can, in this respect, boast of as little as the bar. The late Mr. Fladgate was a man of very great intellectual endowments, supported by learning without pedantry, though I am not aware that he ever appeared as an author. The witty and accomplished Mr. James Smith has seen a quarter of a century roll by, without producing a rival to his celebrated satires on the poetry of the day. Mr. Sharon Turner has

^b The names of Mr. H. N. Coleridge, and Mr. A. Hayward, should be added to the list of lawyers distinguished for literary eminence. Ed.

illustrated his name by more historical learning and deep research than even Sir James Mackintosh, and the antiquarian lore of Mr. Grimaldi entitles him to equal praise. The names of Mr. Edgar Taylor and Mr. Proctor, (better known as Barry Cornwall) are dear to every man of taste and feeling; they deserve a higher tribute than I have the talent to offer.

"But though there is here and there an exception to be found, we are certainly self-excluded from the lists of literature, as entirely as our legal brethren. To confess leisure for such occupation would perhaps be *suicidal* to our business, and hence the cautious secrecy with which we dip our pens in any but official ink.

"Where then shall we wander in further search of the learned serjeant's 'visible superiority?' It must be owned that for a beacon light, destined to guide the forensic traveller on his erratic course, it shines but dimly. Among the political adventurers of the day, the bar can boast of many a favoured child; but so can the attorneys: and though not 'adventurers,' I cannot refrain from naming Mr. Tooke and Mr. Freshfield among those of our body who are justly distinguished in the 'body politic.' The House of Commons has not acquired much solid reputation from its professional members perhaps, and yet even there the best debater, and in some respects the ablest speaker, is to be found on the roll of our courts, in Mr. Whittle Harvey; while one of the most masterly orations that late years have heard within its walls, was delivered by a man who, if now justly acknowledged as the head of his profession, acquired his profound knowledge and prompt acuteness during many earlier years that he spent in ours. I need scarcely name Serjeant Wilde, (since appointed Solicitor General), or advert to his celebrated speech on parliamentary privilege in Stockdale's case. Let any impartial man compare this splendid effort, with one of no mean order by Serjeant Talfourd, on the copyright question, and decide where 'visible superiority' lies!"

Speaking of the public estimation in which a barrister is held, who has successfully passed even the early stages of his career, the author says,

"In strict justice this public value attaches no less to the attorney than to the advocate; to his talent, his energy, his independence, and his honour, the interests of society at large are often, and of individuals, much oftener entrusted, than to the advocate or the pleader. But this is not understood, and therefore his public importance in reference to his profession is not acknowledged; his excellence is more domestic in its character, and less necessarily ostentatious in its display; we are captivated by the successful oratory of the counsel; we are amused and astonished by the acute intelligence of his examination, the vigour of his thrust, the promptitude of his parry, the smartness of his repartee, the dexterity of his address; these powers are at once attractive

and commanding, and the exhibition of them is daily, when clients are abundant. The attorney may possess them in a yet higher degree; his intelligence may be greater, his knowledge as profound, his wit more poignant, and his retort more keen, but he has no field for the exhibition of such accomplishments, and no practice for the improvement of them, and consequently no credit for the possession of them.

"This is the true secret of that professional superiority which no sensible man among us is disposed to question, though no man of spirit will allow it, in insult or disdain, to be carried with impunity beyond its proper limits. I never had any other object in view than to define those limits, and I still remain of opinion that I have done so with accuracy and temper. It might even be plausibly contended that so far from being inferior to the barrister in talent, or in personal character, the solicitor of extensive business must far excel him, or his business will vanish like snow in summer. Few counsel in modern times affect to go beyond the particular subject which chance or taste has led them to master; the elementary principles of course are well studied, and clearly understood by all. With leading cases on any important topic, most of them are familiar; but the conveyancer, the special pleader, the parliamentary advocate, or the Old Bailey counsel, are generally ignorant of the business of each other, and reject it when offered to their management; each man selects, and confines himself to the field he has selected. Not so with the attorney of extensive connexion; he must be prepared for all and each of the ten thousand subjects which litigation involves, every day of his life, and prepared for the discussion of them with clients who cannot understand, and are little inclined to make allowances for the confessed ignorance of their legal adviser; he is "a lawyer," and that is enough for them. If he pleads inexperience in any branch of law, however far removed from his habitual practice, or however abstruse in itself, he is at once voted incompetent, and the retainer is withdrawn. Nor is this his only difficulty; he has to contend with the tempers, the ignorance, the dishonesty, and the artifice of men of every grade; he must guard against deception, or mistake, at every step; he must conciliate opposition, and soothe disappointment, and sustain the desponding spirit, no less than moderate and restrain the irritation of impatience, and the impetuous resentment of a vindictive disposition: these are duties unknown to the profession of the advocate. Again, his intercourse is not confined to rank or intelligence; he is brought into frequent contact, as well with the peasant as the prince; with the man of wealth or science, as with the illiterate and poverty-stricken inmate of the jail: to-day he may be involved in all the intrigue of a parliamentary committee, or closeted in the sacred recesses of Downing Street, and to-morrow busied in the petty squabbles of a union workhouse, or the undignified hos-

tilities of a police office. In all these varied occupations he must be calm, shrewd, and self-possessed; comporting himself with the kindness of a friend, the firmness of an adviser, and the propriety of a gentleman; giving honour to whom honour is due, and not forgetful of the respect equally due to himself. Once more: he is assailed on every side with temptations peculiar to his calling; by the stroke of his pen he can defraud the heir and plunge the widow in destitution; by the violation of confidence, or the exposure of a paper, he may change the destination of accumulated wealth, or by an error in his pleadings, or a failure in his evidence, crown villany with success. And frauds like these may be practised at no greater hazard than the reproach of carelessness or ignorance, while ample bribes are seldom wanting to pay for their commission.

"Can it be denied that talents of the most superior order, and principles of the highest honour, are requisite to carry a man safely through difficulties and snares like these? or that he who has proved by a long career of integrity and success that he possesses them, need little fear comparison with any class, for all those qualities that secure the esteem and respect of mankind?"

We purposely abstain from entering into the controversy which has arisen between the author and the able editor of a contemporary work. Both sides of the question are in good hands, and have been sufficiently discussed. We apprehend that with all our disposition to set matters right, we could not finally settle the points in issue, and for the present we think it our duty not to agitate the subject further. We have no doubt that the good sense of both parties will soon come to the right conclusion.

Such of our readers as have not already perused the work, we recommend to obtain it, as well for their own amusement and instruction, as in justice to the zeal, spirit, and ability of the learned author. Although the name is still withheld from the title page, we believe we shall not be far wrong in ascribing the work to Sir George Stephen, the son of the late eminent Master in Chancery, and brother of the learned Serjeant.

AMERICAN LAW.

THE SEVERAL SOURCES OF ITS DERIVATION.

THE term *American Law* has sometimes been confined to the legal system of the United States only. On this occasion, however, it is proposed to be extended to the whole of America, from the northern boundaries to the southern cape.

On taking a primary and most general view of the subject, the Roman civil law

may be supposed to pervade the greater part of the New World. It may consequently be assumed to be the common basis of American Jurisprudence. Hence, among other reasons which might be stated, it seems necessary to attend to that ancient and "eternal" system of law, which is, however, much neglected in England. Even in the United States, which are mostly of English origin, the Roman law has already begun to be cited or referred to by text-writers. (*Kent's Commentaries*, and *Story's* masterly works on various subjects; namely, *Bailments*, *Equity Jurisprudence*, the *Conflict of Laws*, &c.)

And yet, on taking a closer survey of the matter, it appears that the Jurisprudence of America may be divided into eight principal parts, according to their similarity to the laws of different countries. 1. Spanish; 2. Portuguese; 3. English; 4. French; 5. Dutch; 6. Danish; 7. Swedish; and 8. Russian. Here it is worthy of remark, that all of these instances are European, and hence may easily be traced to that fountain-head—the Roman law.

1. The Spanish law prevails in the late and present colonies of Spain; namely, the Republics of Mexico, Central America (or Guatemala), New Granada, Equador, Venezuela, Peru, Bolivia, Chili, and La Plata; the Spanish Colonies of Cuba and Porto Rico, and the British Colony of Trinidad. And this branch of jurisprudence seems to cover the greatest portion of civilised America.

2. The Portuguese law, in the Empire of Brazil, and the Republics of Paraguay (?) and Uruguay. After the Spanish, the Portuguese is apparently the most extensive legal system in point of territory.

3. The English, in all the United States except Louisiana, and likewise in every part of British America, except Lower Canada, Guiana, St. Lucia, and the before-mentioned Trinidad. And it just now appears to obtain even in the new Republic of Texas. The English law, indeed, as it seems, ranks here as a third class with reference to the extent of territory; and yet, in respect of doctrine, it may be said to be the deepest and the most various and extensive of all.

4. The French, in the late and present Colonies of France, namely, the State of Louisiana, the black republic of Hayti, (?) the two British Colonies of Lower Canada, and St. Lucia, and also the French part of Guiana (Cayenne).

5. The Dutch, in the British part of

Guiana, (Demerara, Essequibo, and Berbice), and likewise in the Dutch Colonies of Surinam, and the Dutch Islands of Curaçoa, St. Eustatius, and St. Martin in the West Indies.

6. The Danish, in the Danish Islands of St. Croix (*Price v. Dewhurst*, 4 Mylne & Craig, 76), St. Thomas and St. John, in the West Indies. If Greenland is to be deemed part of Danish America, it would seem that Danish law also extends to that remote country.

7. The Swedish, in only one part of America, and in the only one Swedish Colony of St. Bartholomew.

8. The Russian, in the recent settlement of Russia, in the North-Western corner of America, which does not yet appear to have received a distinct name.

The utility of this classification will readily appear, by consideration of the requisites not only for the right application of ancient Roman law, and modern European jurisprudence, to America, but also for the proper distinction of these matters according to their similarity to more than sufficiently numerous juridical systems in that part of the world. But still, as several parts of America, even of one and the same European origin, are now subject to different independent and Colonial Governments, the Roman and European laws have, accordingly, been altered and modified by various subsequent legislative enactments and judicial decisions: and, consequently, it appears to follow that the American jurisprudence further requires to be placed in one other light, with a view to generalization. Hence, at length, it also becomes necessary to divide the matter into twenty-two general systems; fifteen of which refer to independent states, and the seven remaining relate to the European Colonial Powers. Of these, then, the following is an alphabetical list, according to the two great political divisions:—

I. Laws of Independent American States.

1. Bolivian Law.
2. Brazilian Law.
3. Law of Central America.
4. Chilean Law.
5. Law of Equador.
6. Haytian Law.
7. Law of La Plata.
8. Mexican Law.
9. Law of New Granada.
10. Law of Paraguay.
11. Peruvian Law.
12. Texan Law.
13. Law of the United States.

14. Law of Uruguay.

15. Venezuelan Law.

II. Laws of European Colonies in America.

16. British American Law.

17. Danish.

18. Dutch.

19. French.

20. Russian.

21. Spanish.

22. Swedish.

With respect to the Portuguese, it may be right here to remark, that Portugal has now no longer any colony in America.

The subject of American law, thus considered as a comprehensive doctrine, is evidently a wide field, for the greater part hitherto unexplained by any writer, so far as publications in English, nor probably in any other language, have yet occurred to the contrary. In order, however, to fill up these important outlines, it is proposed, in a series of future numbers, provided health and other duties permit, to insert in "*The Legal Observer*," a cursory view of these general systems, so far as researches have yet extended, and may hereafter extend.

[The Editor is indebted for this Paper to a learned Member of the Bar, who has been many years a Student of Foreign Law.]

PARLIAMENTARY AGENCY BY PERSONS NOT SOLICITORS.

It has long been a subject of regret as well as pecuniary loss to solicitors in the country having a parliamentary practice, that the London solicitors have so entirely overlooked the agency in conducting private bills through Parliament. At present, the solicitor, who undertakes the responsibility of the bill, is obliged to refer to some of the gentlemen who are termed Parliamentary Agents: whose business it is to superintend the passing of the bill through both Houses; which, with the larger number of bills (those unopposed) is a mere adherence to well known forms and regulations: and even in those bills which are contested, the labour is but little more. Beyond being answerable that the forms of Parliament are observed, they in no manner relieve the solicitor of the bill from the great responsibility and large outlay he is obliged to incur in bringing the business to maturity.

Now, why should not some of the London agency offices undertake this branch of

business, and conduct it upon the same terms towards their country correspondents as any other legal proceedings?

At present, the principal Parliamentary Agents make no allowance whatever to the solicitor,—from whom is expected the fees as they become due; who alone is answerable to his clients, the parties interested; who is not unfrequently the last to be paid; and whose profits do not exceed those of the Parliamentary Agent.

I have no reason or wish to depreciate the talents or zeal of the present Agents in Parliament, some of whom I believe have been solicitors; but it is notorious their profits exceed those in any other legal practice; and it is equally clear, there is nothing in their department but what a well-educated London professional man would be able to conduct with greater satisfaction to the solicitors in the country, as they would prefer communicating with one of their own body, and who has had the benefit of a legal education.

I shall be glad to hear that this suggestion has been attended to, having made up my mind to give a preference to the profession whenever there is an opportunity.

A CONSTANT READER,
At Manchester.

THE STUDENT'S CORNER.

INHERITANCE ACT, 3 & 4 W. 4, c. 106, s. 10. By 54 G. 3, c. 145, corruption of blood was abolished in all cases, except high treason, petit treason, or murder, or abetting, procuring, or counselling the same; and by the 3 & 4 W. 4, c. 106, s. 10, it is enacted, "that when the person from whom the descent of any land is to be traced, shall have had any relation who, having been attainted, *shall have died before such descent shall have taken place*, then such attainer shall not prevent any person from inheriting such land, who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the 1st day of January 1834," without any exception of high treason, &c. as contained in the last mentioned act, and mentioned above. But to bring the case within the benefit of the act, it is necessary that the party attainted *should die before the descent takes place*, otherwise by reason of the corruption of the blood of the party attainted by legal attainder, *i. e.* the sentence of death being passed, the land cannot descend, but will escheat to the lord, because the party attainted, by the corruption of his blood is incapable of being heir, and there can be no other

heir during his life, and the descendant cannot therefore trace the descent of the land through the party attainted. As if there be father, seized in fee, son and grandson, and the son commit treason and is attainted, and then the father die, the grandson cannot inherit the land by virtue of the act, but it escheats to the lord.

If however the party attained *die before the descent takes place*, the descendant may inherit, as if in the above instance the son be attainted and *die*, and *then* the father die, the grandson by virtue of the act may inherit, for the descent took place after the death of the person attainted, through whom it is necessary the descent be traced.

Heretofore, after attainder, all the property of the son from the time of the criminal act was forfeited, and the son was incapable of inheriting anything for the future: therefore on the death of the father *before or after* the son, the lands of the father escheated to the lord, for the person attained was not only incapable himself of inheriting or transmitting his own property by heirship, but also obstructed the descent of lands or tenements to his posterity, where they were obliged to derive their title through him, from any remoter ancestor. Since the passing of this act, however, as the son being attainted dies *before* the father (consequently *before any descent has taken place*), the lands will not escheat; but the grandson or other heir may trace his descent through him to the ancestor, and inherit.

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SELECTIONS FROM CORRESPONDENCE.

EJECTMENT.—FICTION.

Mr. Editor,

Your readers are much indebted to your journal for the able disquisitions contained therein upon the law of ejectment, which must prove of great utility to them as long as the absurd technicalities and ridiculous fictions of this heirloom of the dark and barbarous ages continues to disgrace our code of Common Law Practice; but in this age of improvement, when, (but by slow degrees) the discovery gleams upon us, that the time-worn atmosphere of Westminster Hall is not essentially requisite for the validity of all that is done there, in the name of common sense, why can we not get rid of the present form of an action of ejectment, as also those silly personages John Doe and Richard Roe?—who, albeit they come upon the stage accompanied by the fearful formula of "*sticks, swords, staves and knives*," are about as useful accessories in the legal drama, as their prototypes Noodle and Doodle are in the legitimate drama.

The whole law of landlord and tenant requires much revision and amendment. Like all our other laws, it too much favours the doctrine of resistance: the interests of defen-

dants being in all things especially looked after by our laws.

Our laws should not be based upon fictions which are unworthy of the code of an intelligent nation, and make us revert to the times of burning witches and the ordeal of the hot iron.

CIVIS.

TRANSFER OF MORTGAGE STAMP.

By the 3d Geo. 4, c. 117, repealing so much of the statute of the 25 Geo. 3, c. 184, as relates to the duties on transfers of mortgages, it is enacted: section 2. That the transfer duty shall be only payable where no further advance is made, but where a *further sum* is added to the principal secured, the *ad valorem* duty on mortgages shall be charged only in respect of such *further sum*. See also the case of *Doe d. Brutley and others v. Gray*, 4 Neville & Manning, p. 719, being a decision on this statute. The proper stamp to be affixed to the transfer mentioned by "A Country Subscriber," in Vol. 20 of the Legal Observer, p. 272, will be 2*l*.

AN ARTICLED CLERK.

See also *Doe d. Barnes v. Roe*, 6 Scott, 525.
T. G.

JURISDICTION OF JUSTICE OF THE PEACE.

Can a justice of the peace acting for the county of *B.*, but resident in a borough *thereunto adjoining, which is situate in another county*, legally act for the county of *B.* at his residence within the said borough under or by virtue of all, any, or either, of the following acts: 9 G. 1, c. 7, s. 3; 28 G. 3, c. 49, s. 4; 1 & 2 G. 4, c. 632.

A SUBSCRIBER.

PURCHASE OF ADVOWSON.

It has been held that if a *next presentation* can be shown to have been purchased for a particular person, who is afterwards presented by the purchaser on a vacancy occurring, the transaction is thereby rendered simoniacal, and it has even been denied that the case of a father providing thus for his son forms an exception. But I can find no distinct decision on these points, with respect to a purchase of an *advowson*, which seems to be on a different footing.

I shall be glad to know what is the usual course adopted in practice, when a clergyman wishes to purchase either the next presentation or the advowson, in order to render the transaction unimpeachable, and whether he can legally take a conveyance in his own name of an *advowson*, and afterwards present himself on the next vacancy?

C. L. B.

DELAYS AT THE ASSIZES, AND FORCED REFERENCES.

To the Editor of the Legal Observer.

Sir,

THE manner in which the Cause List at the late Devon Assizes was despatched, has given

rise to so many remarks that I conceive a few words of comment in your columns will not be out of place, to call the attention of the profession to the consideration of the circumstances which I am about to detail.

It is almost unnecessary to state, that great caution should be observed in attempting to fix any censure on the learned judges, who are always distinguished for learning, ability, diligence and patience. It would be unjust to make them responsible for the defects of the *system*, under which it is their duty to administer the laws. If insufficient time prevent their doing justice to the cause list, the fault is not theirs. The commission days are fixed according to precedent; and (unless some very important cause is sent down for trial, without due consideration of the quantity of business which may probably come on) different arrangements might certainly be made for the summer assizes, and if required, a fortnight more of the vacation devoted to business, thus allowing greater intervals between the commission days, and remedying a serious inconvenience, too familiar to the unfortunate attorney, who, with a large number of witnesses, residing at a distance of thirty miles from the assize town, is compelled to make a remanet of his cause, though entered early in the list.

At the assizes I refer to, the list contained twenty-five causes, of which six, a quarter part of the whole, were *referred*, i. e. disposed of without either judge or jury. Here, what expenses (out-of-pocket expenses too) were incurred, for no one useful purpose? Witnesses brought up, merely to be taken back again:—briefs delivered, merely to pay counsel's fees;—and the case called, merely to pay court fees, of about the same amount as if it had gone to a verdict. The first two causes were completely driven out of Court by the Judge, who strongly pressed a reference, stating that it was impossible the jury could comprehend the position of the *locus in quo*, although they had had a view. The trial of these cases, which a jury would have dispatched on the second day of the assizes, continued, from want of the attendance of counsel before the arbitrator, on the ninth, thereby increasing the expenses from 150*l*. to 200*l*!. Another of the referred cases was a remanet, with eighty witnesses, who had spent a week of pleasure during the Spring Assizes, and the same time at the last, when, on coming into Court, and after a special jury were sworn, and of course paid, a *reference* was suggested, and the eighty witnesses had to return to their homes a *second* time, their only use in having left them being to put the litigants to enormous expenses. In another *referred* case there had also been a *view*. A fifth was sent before an arbitrator on the last day of the assizes; and a sixth similarly disposed of.

A special jury, No. 3, came on the last day, and of course No. 4 stands a *remanet* for the next assizes, which will be held in the year of Grace, 1841! Two causes were withdrawn on the third day, after the special juries were

summoned. Three gentlemen had been called away from their business at Plymouth, and after having been detained three days, the cause they were to sit upon was withdrawn,—the fee they were to receive was not paid,—and they were sent home penniless, with not even the thanks of the Court for their comfort.

But my worst evil is to come. *The assizes closed in the middle of a very important trial*, for no other reason than because the Judge had not time to go on.

When the Crown Bar is closed, a second Nisi Prius Court is opened, which rarely has the benefit of a competent Bar. Such has recently been the case, and a defendant driven to consent to a 40s. verdict against him, solely because, from want of the assistance of his leading counsel, who was engaged in the other Court, he stood no chance of success.

In answer to my statements, it may be urged that the judges are the best judges as to the disposal of the cause list; but in reply, I would observe, that whenever they interfere extra judicially in recommending a reference, &c., it should be with the greatest caution. I have frequently known *both* parties to a reference more dissatisfied with the result than if a jury had recorded its verdict against them.

If these grievances recur, the judges may spare themselves the trouble of journeying from Westminster Hall, and an action at law will be looked upon with as much horror as a suit in Chancery or in the Ecclesiastical Court.

Lex.

SUPERIOR COURTS.

Rolls Court.

COPYRIGHT.—INJUNCTION.

The Court will not grant an injunction to restrain the publication of a work, on a charge of piracy, where the party complaining has suffered a considerable time to elapse, previous to his commencing proceedings, and there were strong reasons why his attention should have been called to the work; notwithstanding he may aver that he was not aware of the piracy until shortly previous to the filing of his bill.

In this case, which was argued so long back as the month of January last, and the discussion of which occupied the time of the Court during the greater part of three days, the Master of the Rolls now delivered judgment. It was an application made by the plaintiffs, who are the proprietors and publishers of a topographical work called "Lewis's Topographical Dictionary of England and Wales," against the defendants, Messrs. Chapman and Hall, who are the proprietors and publishers of a work of a similar description, entitled "A Topographical Dictionary of Great Britain and Ireland, compiled from local information and the most recent and official authorities, by John Gorton, Editor of the General Biographical Dictionary"—for an injunction to restrain the defendants from publishing their work, on

the ground of considerable portions of the plaintiff's work having been improperly and piratically copied into that of the defendants. Various affidavits were produced on the part of the plaintiffs in support of the motion, in which it was stated that the plaintiffs commenced the necessary preparations for publishing their work in the year 1825, and from that time until the early part of the year 1831 were constantly occupied in collecting the matter to be contained in it, and making arrangements for its publication, and that besides devoting their whole time and attention to it, they had expended a very large sum of money in its composition and publication. The affidavits also stated that the plaintiff's work consisted for the most part of information taken on the spot by personal survey, and that the whole of the matter contained in it was original composition, and was not copied or taken from any other topographical dictionary or gazetteer; that it was first published in May 1831, but that two editions were subsequently published, the last of which was published in June 1835; that the defendant's work was published in numbers, or parts, the first number having been published in January, 1830; that it was afterwards continued from time to time, and was finally completed in about sixty numbers, or parts, in the early part of 1833, the whole numbers being then bound up into three volumes; that their attention having been recently particularly directed to the defendant's work, they found that the greater portion of the third volume of it, so far as related to the present topographical condition of England, was a mere copy from the first edition of the plaintiff's work; and, to account for their delay in applying to the Court, the plaintiffs stated that, having examined several of the first numbers published by the defendants, and not considering the articles contained in them worthy of notice, their attention was not again called to the defendants' work until the year 1838, when they were induced more particularly to refer to it in consequence of certain proceedings which they had then taken against a Mr. Fullarton to restrain the publication of a work called "Bell's Gazetteer," on which occasion they borrowed a copy from the defendants, and, having subsequently examined it, discovered the piracy of which they complained. In answer to these allegations the defendants filed counter affidavits, in which they stated that having, in the year 1829, determined to publish a topographical dictionary of Great Britain and Ireland, upon a new and original plan, by means of which the information contained in former gazetteers and topographical works might be conveyed to the public in a condensed form and at a reasonable price, they engaged Mr. John Gorton, who was then well known as the compiler of the General Biographical Dictionary, to compile and edit the same; and that they expended upwards of 8,000*l.* in composing and publishing it. They also stated, that for all the useful purposes of a topographical work, their dictionary was greatly superior to that of the plaintiffs, and they particularly

referred to the heading of their several articles, by the arrangement of which they comprehended in a few lines all that was essential with regard to statistical details, distance of a place from London, markets, fairs, population, members of Parliament, &c., &c.; while in the plaintiff's work the same information occupied considerable space, and was scattered about in different parts; and that another important part of the plan and arrangement of their work was, that the information contained in each article was classified, and a uniform arrangement was preserved throughout. They denied that their work was in any respect a copy of the plaintiffs', and they stated they had no doubt that Gorton had obtained a large portion of the matter, alleged by the plaintiffs to have been pirated by the defendants, from the same works and authorities that the plaintiffs themselves had used in the compilation of their work, and in proof of this they cited several instances where whole passages in the plaintiffs' work had been copied *verbatim* from other topographical works published long prior to that of the plaintiffs; but that they had extreme difficulty in answering the plaintiffs' charges in consequence of their having waited till after the death of Mr. Gorton, who died in 1834, before they made any complaint of the defendants' work. They further stated that a great part of their work had been published before the plaintiffs' work made its appearance, and that as great similarity could be traced between their first numbers and the corresponding portions of the plaintiffs' work, as between the particular parts complained of; and, in answer to the plaintiffs' excuse for not having made their complaint sooner on account of their attention not having been called to the defendants' work, they stated that they never concealed the publication of it, but, on the contrary, had expended a large sum of money in advertising it in the daily and weekly journals, and in endeavouring to make its publication generally known, and they particularly referred to one of the plaintiff's affidavits, in which it was stated that the deponent, who had acted for several years as an agent and canvasser for the sale of the plaintiffs' work, had frequently, and upon an average twice in every week, lost the opportunity of obtaining subscribers to the plaintiffs' work by reason of the publication and sale of Gorton's Topographical Dictionary.

The Muster of the Rolls, after slightly adverting to the facts of the case, said, that the injunction must be refused, on the ground of delay. The two works of a similar character were preparing for publication at the same time, and a considerable portion of the defendant's work had been published before that of the plaintiffs, but the plaintiff complained, that in the 3d volume of the defendant's work an improper use had been made of corresponding parts of the plaintiff's work. Six years and a half had elapsed after the publication of the defendant's work was completed before the bill was filed, and although the delay of the plaintiffs was attempted

to be accounted for by the circumstance of the plaintiff's attention not having been called to the piracy, alleged to have been committed, yet on considering the evidence, he thought the plaintiffs had such strong motives to prevent the defendant's publication, that it was their duty to interfere before.

S. Miller, for the defendants, asked for the costs of opposing the motion; but his lordship declined making any order respecting them.

Counsel for the plaintiffs, *Pemberton, Kidersley, and Hardy*.

For the defendants, *Richards and S. Miller*.
Lewis v. Chapmon, August 8th, 1840.

Queen's Bench Practice Court.

WRIT OF TRIAL.—REMITTING CAUSE.—PRACTICE.

The Court, on disposing of a rule for a new trial before the sheriff, will, if it thinks proper, send the cause to be tried before a Judge of the Superior Courts without a separate rule for that purpose.

In this case a writ of trial had been obtained, and the cause was tried before the sheriff. A rule for a new trial was obtained, and was made absolute. After the rule had been disposed of,

Humfrey at once moved that the second trial should take place before a Judge of this Court. Two trials had already been had, and mistakes made by the under-sheriff in his direction to the jury. Under these circumstances it was desirable that the matter should no longer remain before that tribunal.

Whitehurst, who had been engaged in the discussion of the rule, and had succeeded in making it absolute, contended that if the case ought to be taken from the under-sheriff for the purpose of trial, that ought to be made the subject of a special rule for that purpose. The successful party in the present application for a new trial could not anticipate that the other side would apply to remove the cause from the former jurisdiction. They were consequently not in a situation to meet it.

Humfrey said that such a practice as that now sought to be enforced had been adopted in the Court of Exchequer on various occasions. To render a separate application necessary was only to compel the parties to incur further useless expense.

Coleridge, J., was of opinion that the special circumstances which the present case shewed perfectly warranted the removal of the cause from the jurisdiction of the sheriff. The only question then remained as to whether an application for that purpose should be granted at once, without requiring a special rule to that effect. The practice adopted by the Court of Exchequer seemed a desirable one, as it was calculated to save expence without injury to the parties. His Lordship would therefore adopt it here. The rule for a new trial would consequently be absolute, and a part of that rule would be to rescind the judge's order for granting a new trial, and restoring

the cause for the purpose of being tried before a Judge.

Rule absolute accordingly.—*Duddey v. Yates*, E. T. 1840. Q. B. P. C.

TENDER.—CHEQUE.—WAIVER.—LETTER.—LACHES.

A tender by cheque in a letter, if not objected to on the ground of its form, is a good tender.

In this case the defendant pleaded a tender. The mode in which the tender was proved was, by shewing that a cheque to the amount of 5*l.* had been sent by the defendant to the plaintiff in a letter. In the letter was also contained a request that a receipt might be sent. The answer sent by the plaintiff was by letter containing the cheque, and requiring a larger sum to be sent. No objection was made in the letter to the cheque, as a means of tendering the money due. The case was tried before the undersheriff, and on the objection being taken to the insufficiency of the tender by means of a cheque, the undersheriff was of opinion, that such a tender was insufficient. The jury accordingly found a verdict for the plaintiff.

Martin obtained a rule *nisi* for a new trial, on the ground of misdirection.

E. L. Richards shewed cause, and contended that a tender by a cheque could not be considered sufficient in point of law.

Coleridge, J., was of opinion, that the plaintiff had waived all objections to the nature of the tender by means of a cheque, by the answer he had sent returning that cheque. He had not objected to the form of it, but merely claimed a greater amount than that which had been tendered. As to the claim for a receipt in the defendant's letter, that was not stated as a condition precedent, and therefore that did not affect the validity of the tender. The present rule must therefore be made absolute.

Rule absolute.—*Jones v. Arthur*, E. T. 1840. Q. B. P. C.

STAMP.—PROMISSORY NOTE.—MEMORANDUM.

What words will constitute a promissory note.

This was an action to recover the sum of 5*l.* 5*s.* 0*d.*, for money lent by the plaintiff to the defendant. The case was tried before the undersheriff for Sussex, and a verdict found in favor of the plaintiff to the amount of 5*l.* 5*s.* 0*d.* In support of the plaintiff's case a memorandum in this form was produced:

"August 25, 1837. Memorandum, that I Benjamin Payne had 5*l.* 5*s.* 0*d.* for one month of my mother and Shrivell, from this date, to be paid by me to her.

Benjamin Payne."

No stamp was placed on this instrument, and it was objected that it ought to be stamped. The undersheriff was of opinion that a stamp was unnecessary, and directed the jury accordingly to find a verdict in favor of the plaintiff. This they did, and

Humfrey obtained a rule *nisi* for setting aside the verdict so found, and obtaining a new trial.

Peacock appeared to support the verdict, and contended, that the paper in question was a mere acknowledgment of the receipt of money by the defendant from his mother, and therefore could not require a stamp.

Humfrey supported the rule, and cited *Green v. Davies*,^a and *Ellis v. Mason*.^b These cases shewed that the documents produced before the undersheriff required a stamp in order to render it evidence before the jury.

Coleridge, J., was of opinion that the paper in question amounted to a promissory note, and therefore was improperly received as evidence without a suitable stamp. The present rule must therefore be made absolute.

Rule absolute.—*Shrivell v. Payne*, E. T. 1840. Q. B. P. C.

EXHIBITS.—AFFIDAVITS.—COPIES.—ATTACHMENT.—DEFENCE.—MASTER'S DISCRETION.

The Court will not compel a party to deliver copies of exhibits, made on an inquiry before the Master, where the inquiry is at an end.

In this case the Master was directed to inquire into the matters connected with an attachment against a sheriff's officer for receiving too great an amount of fees. By direction of the Master, several affidavits were filed, and to them certain exhibits attached. After the inquiry had ended,

James obtained a rule *nisi* to inspect and take copies of certain of these exhibits so made. The affidavits on which the application was founded did not shew that these exhibits had been had away from the Master's office, nor did it disclose the object which the applicant had in view in wishing to have the inspection and take the copies proposed.

Jervis and *Welsby* shewed cause, and submitted that as the proceedings on the rule referred to the Master had now ended, there was no reason whatever for the exhibits then produced before that officer being now allowed to become the objects of inspection and copy to the persons who had obtained this rule.

Coleridge, J., thought that the present rule must be discharged. If the exhibits were now in the Master's office, they might be inspected. If they were not, it must be presumed that they had been properly delivered out to the parties. If so, then there was no reason for making the present rule absolute. The general principle, that where a cause was pending, the Court would compel the production, for the purpose of inspection, of documents exhibited in the course of the proceeding, did not here apply. Here the proceeding was no longer pending, and therefore no reason existed for this summary interference. What right was there to compel a party to produce docu-

ments, the sole object of which was to prevent an opponent the means of further proceedings, independent of the attachment? The rule must therefore be made absolute.

Rule absolute.—*Davenport v. Jones*, E. T. 1840. Q. B. P. C.

**AFFIDAVIT.—JURAT.—IRISH QUEEN'S BENCH.
—DELIVERY UP OF DOCUMENT.**

The Court of Queen's Bench in England will not allow a party to read an affidavit, where a jurat of it shews that it has been made before a commissioner of the Queen's Bench in Ireland.

It is necessary that the affidavits in support of an application for the purpose of obtaining a copy of documents, of which it is presumed more than one copy has been made, should shew that only one copy has been made.

In this case the defendant had borrowed a certain sum of money, and in order to secure its repayment, he granted an annuity. As a further security, he executed a warrant of attorney and a bond. After paying the annuity for some time, it fell into arrear, and an action was commenced for the recovery of the arrears. The defendant then without stating the object of making the motion, obtained a rule to shew cause. On the motion of

V. Lee, for the delivery of a copy of the annuity deed, the warrant of attorney, and the bond:

Petersdorff shewed cause against this rule, and objected that the affidavit on which the rule had been obtained was insufficient, as it did not appear to have been sworn before a competent person, at least so as to enable the defendant to read it in this court. It appears not to have been sworn before a person who was a commissioner of the Court of Queen's Bench, Ireland, for taking affidavits in that country. By the 3 & 4 W. 4, c. 42, s. 42, the courts at Westminster had power to grant commissions to persons in Ireland to take affidavits in causes pending in those courts. The commissioner here, however, administering the oath, was not such a commissioner. If the affidavit had been sworn before one of the Irish superior courts, it might have been different; it might have been sworn before any magistrate, and would then have been receivable. At present, it was an affidavit sworn before a person having an authority delegated to him by one of the Irish courts, and that delegation the court could not recognise. The affidavit could not consequently be read in support of the application.

V. Lee in support of the rule, contended that the affidavit could be read, as it was an affidavit taken before a person who had *prima facie* authority to take such a one. If not, it was for the other side to shew it. If it was taken by a person who was *prima facie* competent to take it, that was sufficient. Although there was no direct authority to shew that the courts in this country would receive such an affidavit, there was no authority that they would

not. It was admitted that if the affidavit had been sworn before a magistrate, it could be read; it was difficult to see, if that was the case, why such an affidavit as the present should not be read.

Williams, J. took time to consider.

Cur adv vult.

Williams, J. was of opinion that the jurat not describing the person before whom the affidavit was sworn as a commissioner of any court in this country, or as a commissioner of this court, the affidavit could not be read.

V. Lee then said that he would support the rule on the affidavits, to which this objection did not apply.

Petersdorff shewed cause, and contended that as it did not appear that no more than one copy of the instrument required to be produced had been made at the time of their execution, the defendant was not in a situation to require the production of them, nor to take a copy.

V. Lee, in support of the rule, contended that it was improbable from the nature of the instrument that more than one copy had been made. If more than one had been made, it was incumbent on the plaintiff to shew that by affidavit. The Court would presume that only one copy had been made.

Williams, J., thought that the applicant should have shown that no more than one copy was made at the time of executing the instrument, and not having shewn this, the case was not brought within the principle of the cases in which the Courts were in the habit of interfering. The present rule must therefore be discharged.

Rule discharged.—*Griffin v. Smythe*, E. T. 1840. Q. B. P. C.

**EJECTMENT.—NONSUIT.—RESTORING CAUSE.
—LEASE, ENTRY, AND OUSTER.**

In an action of ejectment, the defendant after entering into the consent rule, did not appear at the trial to confess lease, entry, and ouster. The plaintiff was accordingly nonsuited; an application was afterwards made to restore the cause to the list, but on cause being shewn, the Court thought that the proper application should have been to set aside the nonsuit, and therefore discharged the rule.

This was an action of ejectment, and a person named Macdonnell, who was the tenant in possession, was admitted to defend, and accordingly he entered into the common consent rule, which contained the ordinary condition in case of his not confessing lease, entry and ouster. When the cause came on for trial, no one appeared on behalf of the defendant, he was accordingly called three times in the usual manner, to confess lease, entry, and ouster, but he not appearing to comply with the requisites of the consent rule, the plaintiff was nonsuited.

James, in the following term, obtained a rule nisi for restoring the cause to the list on a special statement of facts, contained in an affi-

davit which sought to account for the absence of the defendant without any blame being attached to him.

Crenwell shewed cause, and contended, that the other side had mistaken the form of the application, which ought to be made in order to obtain the relief required. If the cause had been struck out of the list by the judge at *nisi prius*, the case might have been different. Here, however, a nonsuit had taken place, and therefore the proper application was to set aside that nonsuit and obtain a new trial.

James, who had obtained the rule, submitted that although such a technical objection as that taken by the other side did exist to the form of the application, yet, that the parties being once before the Court, it was perfectly competent for the Court to mould the rule in such a manner as would obtain justice between the parties.

Crenwell contended, that as the lessor of the plaintiff had been brought there to answer a particular application, which was clearly wrong in point of form, it must abide the usual fate of unsuccessful applications.

Williams, J., was of opinion that the proper application would have been to set aside the nonsuit, and not to restore the cause to the list. Where a party had not adopted the proper form of application, and the other side took an objection, he could not be compelled to shew cause against any other objection which might be made. Without consent, the Court could not mould the rule as suggested. That consent was here withheld, and therefore the necessary consequence was, that the present rule must be discharged.

Rule discharged.—*Doe d. Fish v. Macdonnell*, E. T. 1840. Q. B. P. C.

EJECTMENT.—SERVICE OF DECLARATION.—CHAPEL.—SCHOOL.

In an action for the recovery of a chapel and free school, a service is sufficient on the minister, one of the trustees, and by sticking up a copy on the door of the chapel and the school, as well as serving the Master.

This was an action of ejectment. The mode of service was in the following manner. The action was to recover a chapel and a free school. The minister, one of the trustees, and the schoolmaster, had been served, and a copy of the declaration had been stuck on the door, both of the chapel and the school.

Henderson moved for leave to sign judgment against the casual ejector, on an affidavit stating the above facts. He referred to the cases of *Doe d. Kirschner v. Roe*,^a and *Doe d. Dickens v. Roe*,^a which, by analogy, were authorities in support of the present application.

Coleridge, J., was of opinion that the affidavit supporting the present application was sufficient to entitle the plaintiff to sign judgment against the casual ejector.

Rule granted.—*Doe d. Smith, Bart. v. Roe*, E. T. 1840. Q. B. P. C.

EJECTMENT.—SEVERAL TENANTS.—AFFIDAVIT OF SERVICE.—DECLARATION.

Service in ejectment where there are several tenants.

In this cause an action of ejectment was brought against fifty-four tenants. When the declaration was served, it contained the name of one of the tenants only, that one on whom the declaration was so served. When judgment against the casual ejector was applied for, the declaration attached to the affidavit of service contained the names of no tenants at all; the affidavit however stated that a copy of that declaration had been served on the tenants in possession. In the original declaration, the names of all the fifty-four tenants were introduced.

G. T. White now applied for leave to sign judgment against the casual ejector. He submitted that the service must be considered as sufficient. The introduction of the names of all the tenants into the declaration must be immaterial.

Williams, J., having consulted with Master Bunce, was of opinion that the copy attached to the affidavit of service ought to contain the names of all the tenants in the original declaration. The affidavit would then be sufficient.

Rule refused.—*Doe d. Ludford v. Roe*, E. T. 1840. Q. B. P. C.

Common Pleas.

JUDGMENT AS IN CASE OF A NONSUIT.—PREMATURE APPLICATION.

A motion for judgment as in case of a nonsuit is too early, where the motion is made in Easter Term, and issue was not joined until Michaelmas vacation.

A rule was obtained in the present case by *Goulburn, Serjt.*, for judgment as in case of a nonsuit. Issue was joined in the vacation of Michaelmas Term, and the motion for judgment as in case of a nonsuit was made in the present term.

Channell, Serjt., shewed cause.—According to the authorities, the present rule must be discharged. It was a London cause. Issue being joined in Michaelmas vacation, the requisites of the statute could not be considered as complied with by moving thus early. The Court would therefore discharge the rule.

Goulburn, Serjt., *contra*, submitted that *Williams v. Edwards*,^a was an authority to shew that the application could not be considered as premature.

Tindal, C. J., said, there were certainly decisions both ways, but he thought that he must decide according to those which determined the present application to be too early. Under these circumstances, however, the present rule must be discharged without costs.

Rule discharged without costs.—*Duggan v. Wilbraham*, E. T. 1840. C. P.

^a 7 Dowl. 97.

^b 7 Dowl. 121.

^a 5 Dowling, 526.

**ACTS PASSED AND BILLS POSTPONED
RELATING TO THE LAW DURING
THE LAST SESSION.**

Royal Assents.

March 23d, 1840.

Brighton Small Debts Court.
Penalties for Gaming. See p. 261, *ante*.

April 3.

Mutiny. (Two Acts.)
Bolton Small Debts Court.

April 14.

Publication of Parliamentary Papers. See p.
6, *ante*.
Newton Abbot Small Debts Court.

May 19.

Barkston Ash Small Debts Court.

June 4.

Tithe Commutation. See p. 115.

June 19.

Annual Indemnity. See p. 227, *ante*.
Cheshire Coroners.
Tavistock Small Debts Court.
Kingsnorton Small Debts Court.

July 3.

Clergy Maintenance. See p. 277, *ante*.
Prisons Regulation. See p. 292, *ante*.
F frivolous Suits Costs. See p. 197, *ante*.
Rated Inhabitants Evidence. See p. 214, *ante*.
Vagrant's Removal.

July 23.

Masters in Chancery Retirement.
Inclosure Acts Amendment.
Police Rates Assessment.
Borough Watch Rates.

August 7.

Marriage Registration Act Amendment.
Metropolitan Police Courts.
Notice of Elections.
Imprisonment for Debt Act Amendment.
Grammar Schools.
Admiralty Court.
Usury on Bills of Exchange.
Attorneys and Solicitors (Ireland).

August 10.

Ecclesiastical Courts. (No. 1.)
Administration of Justice in Chancery.
Highway Rates.
Non-parochial Registers.

August 11.

Ecclesiastical Duties and Revenues.
Loan Societies.
Joint Stock Banks.

BILLS POSTPONED.

Copyhold and Customary Tenure.
Law of Principal and Factor.

Juvenile Offenders.
Drainage of Lands.
Small Debt Courts for Liverpool, Marylebone,
and Wakefield.
Copyright in Designs of Woven Fabrics.
Freemen and Burgesses' Rights.
Law of Sewers.
Amendment of Poor Law.
Registration of Voters.
Right of Voting.
Prevention of Bribery.
Insane Prisoners.

The following have been already noticed as
postponed or negated :—

Copyhold Enfranchisement.
Small Tenements.
Bribery Prevention.
Parochial Assessments.
Affirmations.
Copyright.
Administration of Justice in Equity.
Breach of Promise of Marriage, &c.
Abolition of Capital Punishment.

THE Houses of Parliament were prorogued by the Queen in person on Tuesday the 11th instant. The Speech from the Throne noticed the Act just passed relating to Ecclesiastical Duties and Revenues, but contained no allusion to Law Reform. This, we believe, is the first time during the last ten years that that fruitful topic of remark has been altogether omitted. The postponement of the Abolition of the Exchequer and the Appointment of New Judges in Chancery has no doubt occasioned this remarkable silence.

THE EDITOR'S LETTER BOX.

The Third Part of the Quarterly Digest of all Reported Cases for this year, is just published.

The Letters of A. C. ; "An Articled Clerk;" F. ; and "Nullus;" have been received.

Our correspondent who furnished the case relating to a Banker's Draft proved as a Codicil, is requested to favour us with the name of the case, and the date of the decision.

R. G. W. will observe, that his answer to P—e has been anticipated.

The Michaelmas Term Examination will be as usual on the 9th or 10th day before the end of the term. The number of questions in the three departments which must be answered is not precisely fixed. Our correspondent is recommended to prepare himself to answer a full majority of the questions.

The Legal Observer.

SATURDAY, AUGUST 22, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE REFORM OF THE CHANCERY OFFICES.

WE commenced the labours of the legal year, which is now about to close, with the sincere desire of effecting a reform of the offices connected with the Court of Chancery, and we principally directed our attention to three of the most pressing grievances connected with them. 1. The Six Clerks' Office;^a 2. The taxation of costs;^b and 3. The Master's Offices;^c and we have the satisfaction of stating that under stat. 3 & 4 Vict. c. 94, “the act for facilitating the administration of justice in the Court of Chancery,” just passed,^d all the reforms which we proposed may now be effected. With respect to the Six Clerks' Office, our observations pointed to the large sums which they receive for doing what might in almost all cases be done by the solicitors themselves, and the returns, subsequently published by these officers fully bore out our assertion^e as to the monies received; and we then, in the name of the profession, called loudly for the re-modelling, and if necessary, the abolition of this office. The act which has been passed, enables and requires the Lord Chancellor, with the consent of the Master of the Rolls and Vice Chancellor, by any rules or orders to be made within five years from the passing of the act, (10th August, 1840) to make alterations “as to the mode of filing bills, answers, and other proceedings,” and “in the form and mode of drawing up, entering, and enrolling orders and decrees, and of making and delivering copies of pleadings

and other proceedings, and to make such regulations as to the taxation, allowance, and payment of costs, and for altering, superintending, controlling, and regulating the business of the several offices of the Court, and also of collecting the fees payable to the Suitors' Fee Fund of the copy money now received by any of the officers to their own use, and otherwise for carrying into effect the said alterations as to them may seem proper.” By s. 2, additional officers may be appointed; and by s. 4, compensation for the diminution of the emolument of any present officers by the operation of the act, and the rules and orders to be made thereunder, may be made out of the Suitors Fund by order of the Treasury. We apprehend, therefore, that under these portions of the act, the Six Clerks' Office may be re-modelled, so as to render it serviceable to the suitor, and not, as at present, a burthen; and that if the profits of the Six Clerks be diminished, they may receive compensation in the manner directed by the act.

Our observations with respect to the taxation of costs, went to shew the present inefficient and unsatisfactory practice in this respect; that the masters in chancery are the officers presumed to tax the costs, but that it is really done by the Clerks in Court, without any proper check or control; and we suggested the appointment of a taxing officer or officers, expressly for this important duty. We conceive that it is quite clear that under the portions of the act we have just cited, this reform may now be effected.

In the Master's Office, we pointed out the inconvenience of the present practice of granting warrants for a single hour; the insufficient attendance of the masters,

^a 19 L. O. 1.

^b p. 19.

^c p. 98.

^d Printed *post*, p. 310.

^e *Ante*, p. 145.

now abundantly proved by their returns to parliament,^f and we alluded to the necessity of their sitting in public under certain regulations, and of appointing an additional clerk in each of the masters' offices. The new act, besides the power to which we have already referred, authorizes the Lord Chancellor to make such alterations as may be expedient "in the form and mode of proceeding before the masters," and under this clause and the other clauses of the act to which we have referred, we apprehend that there is no doubt that all the requisite reforms in the masters' offices may be effected.

The reforms, therefore, for which we have so long contended, will now, as we hope and believe, be accomplished; but this is by no means all the benefit which may be derived from the act. It authorizes alterations "in the forms of writs and commissions; in the mode of sealing, executing, and returning the same; in the form and mode of obtaining discovery by answer or otherwise; and in the form and mode of pleading; and in the form and mode of taking or obtaining evidence; and generally, in the form and mode of proceeding to obtain relief, and in the general practice of the court with relation thereto." We need hardly add, that changes the most extensive and important may be effected under these words, and the whole scope of the act, and we think the profession may rely on the present Lord Chancellor for acting on the powers thus entrusted to him, firmly but considerately.

In conclusion, we cannot but express our thanks to the framers of the measure, and all concerned in passing it into law, as we conceive it will be one of the most important and valuable acts ever passed, with respect to the administration of justice in this country.

THE LAW OF JOINT-STOCK COMPANIES.

TRANSFER OF SHARES.

We have now opened several heads on this important subject, and we shall proceed to the others as time and space permit. In the mean while, we shall add the new cases relating to each of the heads already touched on, as they occur. In our first article,^a we considered the

nature of shares in these companies, and the mode of transfer, and we now wish to notice a very recent case relating to this branch of the subject. By the 17th section of the Statute of Frauds, (29 Car. 2, c. 3) no contract for the sale of goods to the value of 10*l.* shall be valid unless the buyer actually receives part of the goods sold by way of earnest on his part, or unless he gives part of the price to the vendor by way of earnest, or in part of payment; or unless some note in writing be made and signed by the party, or his agent, who is to be charged with the contract. And by stat. 9, G. 4, c. 14, s. 7, it is enacted, that the provisions of the 17th section of the Statute of Frauds shall extend to all contracts for the sale of goods of the value of 10*l.* or more, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of the contract be actually ready for delivery. It has been decided in a recent case, that shares in a joint-stock company are not within the 17th section. The case was as follows:—

In an action of assumpsit, for not transferring shares in a joint-stock bank company, called the Northern and Central Bank of England, and sold by the defendant to the plaintiff, Plea (among others): That the alleged contract was for the sale of goods, wares and merchandize, for a price exceeding 10*l.*; that there was no part delivery or earnest to bind the bargain, and no note of it in writing signed by the defendant, &c. Verification: On the trial before Coleridge, J., at the Liverpool Spring Assizes, 1838, a verdict was found for the plaintiff, subject to a motion to enter a verdict for the defendant if the Court should be of opinion that the contract related to goods, wares, or merchandize, within the 29 Car. 2, c. 3, s. 17. A rule *nisi* having been obtained in the following Easter Term, Lord Denman, C. J. said—No case has been cited to shew that the shares, which are the subject of this contract, are goods, wares, or merchandizes, within the 17th section of the Statute of Frauds. Cases have been cited relative to reputed ownership under the bankrupt act, which might appear in point if we looked at the mere language of them, but they cannot be pressed further than they have been. These shares are a chose in action.

^f See *ante*, p. 483.

^a *Ante*, pp. 1—3.

and the sale of them is not invalidated for want of a memorandum in writing. *Patteson, J.*—I assent to the distinction which has been pointed out between the language of the Statute of Frauds and of the Bankrupt Act. *Williams and Coleridge, JJ.*, concurred. Rule discharged. *Humble v. Mitchell*, 3 Per. & Dav. 141. It had been repeatedly held that shares pass to assignees under the Bankrupt Act, as being within the reputed ownership of the bankrupt. *Ex parte Vallance*, 3 Mont. & A. 224; *Ex parte Burbridge*, 1 Deac. 131; *Ex parte Ord*, 1 Deac. 166. But the above case decides that these decisions do not apply to a contract to transfer shares not affected by bankruptcy.

LAW AND PRACTICE OF EJECTMENT.—No. III.

SERVICE OF THE DECLARATION AND NOTICE ON THE TENANT, AND READING AND EXPLAINING THEM.

THERE are few practical questions which come so repeatedly before the Court, as the service of the declaration in actions of ejectment, where such service has not been personally effected on the tenant himself. It was formerly held that the service of the declaration ought to be on the tenant himself, or his wife; and that the service on any of his children or servants was not good. *Salk*. 255.

By the 4 G. 2, c. 28, it is enacted, 'That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to enter for the non-payment thereof, such landlord or lessor shall and may without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage: or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such declaration in ejectment; and such affixing shall be deemed legal service thereof; which service or affixing such declaration in ejectment shall

stand in the place or stead of a demand and re-entry, &c.

We shall arrange the decisions on this subject under such convenient heads, as will enable the reader readily to perceive the distinctions which the Courts have established. It may first, however, be observed, that where the service on the tenant has been personal or completed according to the settled practice, then the Court will grant a rule for judgment against the casual ejector *absolutely* in the first instance; but if the service be incomplete in any respects, then a rule *nisi* must be obtained according to the circumstances of the case, and such rule will specify the mode of service that will be deemed sufficient. It should also be observed, that generally the service of the declaration in ejectment, and the notice, is made on *the premises* in question; but in some cases such local service is not necessary.

Service on the tenant personally.

Thus if the service be effected *personally* on the tenant himself, it need not be made on the premises. *Savage v. Dent*, 2 Stra. 1064. And it seems immaterial whether such personal service was effected at a place within the jurisdiction of the Court or not. *Doe d. Daniel v. Woodroffe*, 7 Dowl. 494.

Service on the Wife.

The declaration and notice may be served on the wife, in case she and her husband were living together as man and wife, when the service was made. *Jones v. Marsh*, 4 T. R. 464; but the mere acknowledgment of the wife of the tenant that she had received a declaration in ejectment, will not bind the husband, if it was not personally served on her. *Goodtitle d. Read v. Badtitle*, 1 B. & P. 384. Service of a declaration and notice on a *servant*, which the wife of the tenant afterwards admitted she had received, and had given to her husband, was held insufficient. *Doe d. Tucker v. Roe*, 4 Moore & S. 165. And service on the wife of a tenant who is living with her husband, although *not on the premises*, is deemed sufficient. *Doe d. Boulcott v. Roe*, 7 Dowl. 463; but the affidavit must state that the service was on the premises, or that the wife was living with her husband. *Doe d. Mingay v. Roe*, 6 Dowl. 182.

Rules *nisi* have been granted in the following instances: Service on the premises on a woman, representing herself to be the wife of the tenant in possession, and so reputed to be, and living with the tenant,

Doe d. Bremner v. Roe, 8 Dowl. 135 ; So service on the wife on the premises, where a copy of the declaration was not left with her, she refusing to take it. *Doe d. Nash v. Roe*, 8 Dowl. 305.

Service on a child or servant of the tenant.

Service on the child or servant of the tenant is deemed good service, provided the service was made on the premises, and the declaration was afterwards received by the tenant or his wife. 2 Wils. 263 ; Barnes, 175, 180, 188, 190. The service on the son, daughter, or servant, or any person of the family, will be sufficient, if it appear that the service has come to the knowledge of the tenant in due time. *Doe d. Agar v. Roe*, 6 Dowl. 624. Where the service was upon the daughter, and on a subsequent day the wife acknowledged that she had received the declaration, and shewed it to the attorney, who then read it over to her and explained it, upon which she then said that the paper should be sent to her husband, the service was holden sufficient. *Smith v. Hurst*, 1 H. Bl. 644.

In the following cases rules nisi were granted :—Service on the daughter of a bedridden tenant on the premises. *Doe d. Frost v. Roe*, 8 Dowl. 301 ; S. C. 19 L. O. 285. So service on the nephew of the tenant in possession on the premises is sufficient, where the tenant refuses to be seen. *Doe d. Moody v. Roe*, 8 Dowl. 306.

Where there are several tenants.

Service on one joint-tenant is sufficient. *Doe d. Clothier v. Roe*, 6 Dowl. 291 ; but where there are several tenants, they must all be served in the usual manner. *Doe d. Elwood v. Roe*, 3 Moore, 578. Service on the Secretary of the East India Company, in respect of premises sought to be recovered from the company is deemed sufficient. *Doe d. Coopers' Company v. Roe*, 8 Dowl. 134 ; S. C. 19 L. O. 77.

Where the tenant refuses to receive the notice or absconds.

In case the tenant or his wife refuse to receive the declaration, it may be left on the floor, or put under a door or window, or posted on the premises in the best way that can be effected. *Doe d. Frith v. Roe*, 3 Dowl. 469 ; *Doe d. Courthope v. Roe*, 2 Dowl. 441. So the service of a declaration on the premises will be dispensed with where access to them is prevented by the tenant. *Doe d. Barrow v. Roe*, 1 Scott, N. S. 25.

If the tenant should abscond, or keep out of the way in order to avoid being served with the proceedings in ejectment, it is usual, if there are any special circumstances, to serve a declaration on some person residing at his house, or if that cannot be done, to affix the same upon the door ; and then, on an affidavit of the circumstances, to move the court for a rule upon the tenant to shew cause why the service mentioned in the affidavit should not be deemed sufficient. If the plaintiff be aware of the difficulties, it is better to apply to the Court that service of such a nature should be deemed sufficient. *Sprightly v. Dunch*, 2 Burr. 1116 ; *Goodright v. Norright*, 1 Bl. Rep. 290 ; *Fenn v. Denn*, 2 Burr. 1181 ; *Gulliver v. Wagstaff*, 1 Bl. Rep. 317.

Time of Service.

It was formerly necessary to effect the service before the *essoign* day of the term in which the tenant was required to appear ; but the practice in that respect is now altered. By the rule of Trinity 1 W. 4, it is directed, that declarations in ejectment may be served before the *first* day of any term, and that the plaintiff shall be entitled to judgment against the casual ejector, in like manner as on declarations served before the *essoign*, or first general return day. It must, however, be served before the term. Service on one of the Easter holidays will not be sufficient, if such holiday formed part of the term, although the Courts do not sit. *Doe d. Fradsham v. Roe*, 6 Dowl. 479. When served on the son, daughter, servant &c., it must be shewn that the tenant received it by midnight of the day before the first day of term. *Doe d. Harris v. Roe*, 2 Dowl. 607. When the right of entry accrues in, or immediately after, an issuable term, the declaration between landlord and tenant may be served under 11 G. 4, and 1 W. 4, c. 70, within ten days after the right of entry, without any distinction of term or vacation.

Explaining the Declaration.

The notice should be read over and explained to the tenant, or the person on whom it is served ; reading it without explanation is insufficient. If the tenant read it and state he understands it, or if he refuse to listen to the reading or explanation, it will be deemed sufficient. *Doe d. Wade v. Roe*, 6 Dowl. 51.

Venue.

According to the rule of E. 2 Geo. 4, where the venue is in London or Middlesex,

the tenant is required to appear on the *first day* of the next term; in other counties the notice is to appear in the *next term* generally.

CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

We have printed several acts of the last session, effecting alterations in the law, and before proceeding to the others, it may be useful to give a complete list of the Acts of the Session, up to the present month. The remainder shall be stated in the next or an early number.

CAP. 1.—An Act for exhibiting a bill in this present Parliament for naturalizing his Serene Highness Prince Albert of Saxe Coburg and Gotha. [24th January 1840.]

CAP. 2.—An Act for the naturalization of his Serene Highness Prince Albert of Saxe Coburg and Gotha. [7th February 1840.]

CAP. 3.—An Act for enabling her Majesty to grant an Annuity to his Serene Highness Prince Albert of Saxe Coburg and Gotha. [7th February 1840.]

CAP. 4.—An Act to apply the sum of two millions to the service of the year one thousand eight hundred and forty. [24th February 1840.]

CAP. 5.—An Act to repeal so much of an act passed in the thirteenth year of the reign of his Majesty King George the Second, intituled "An act to restrain and prevent the excessive increase of horse-races;" and for amending an act made in the last session of Parliament, intituled "An act for the more effectual preventing of excessive and deceitful gaming," as relates to the subject of horse-racing. Printed p. 261, *ante*. [23d March 1840.]

CAP. 6.—An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their quarters. [3d April 1840.]

CAP. 7.—An Act to apply the sum of eight millions out of the consolidated fund to the service of the year one thousand eight hundred and forty. [3d April 1840.]

CAP. 8.—An Act for the regulation of her Majesty's royal marine forces while on shore. [3d April 1840.]

CAP. 9.—An Act to give summary protection to persons employed in the Publication of Parliamentary papers. Printed p. 6, *ante*. [13th April 1840.]

CAP. 10.—An Act to authorize the issue of Exchequer Bills for publicworks and fisheries and employment of the poor. [14th April 1840.]

CAP. 11.—An Act to settle an annuity on Lord Seaton and the two next surviving heirs male of the body of the said Lord Seaton to whom the title of Lord Seaton shall descend, in consideration of his important services. [19th May 1840.]

CAP. 12.—An Act for raising the sum of eleven millions by Exchequer Bills, for the service of the year one thousand eight hundred and forty. [19th May 1840.]

CAP. 13.—An Act to amend an act of the first and second years of the reign of her present Majesty to abolish compositions for tithes in Ireland, and to substitute rent-charges in lieu thereof. [19th May 1840.]

CAP. 14.—An Act to continue for one year, and to the end of the next session of Parliament, the acts for the relief of Insolvent Debtors in Ireland. [19th May 1840.]

CAP. 15.—An Act further to explain and amend the acts for the commutation of tithes in England and Wales. See p. 115, *ante*. [4th June 1840.]

CAP. 16.—An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively until the twenty fifth day of March one thousand eight hundred and forty one; and for the relief of clerks to attorneys and solicitors in certain cases. Printed p. 227, *ante*. [19th June 1840.]

CAP. 17.—An Act for granting unto her Majesty duties of customs, excise, and assessed taxes. [19th June 1840.]

CAP. 18.—An act to discontinue the Excise Survey on Tobacco, and to provide other regulations in lieu thereof. [3d July 1840.]

CAP. 19.—An Act for granting to her Majesty an additional duty of customs on timber. [3d July 1840.]

CAP. 20.—An Act to amend an act passed in the first year of the reign of his late Majesty King George the first, intituled "An act for rendering more effectual her late Majesty's gracious intentions for the augmentation of the maintenance of the poor clergy;" and to render valid certain agreements which have been made in pursuance of the said act; and for other purposes. See p. 277, *ante*. [3d July 1840.]

CAP. 21.—An Act to extend to the British Colonies in the West Indies an act passed

in the fifth and sixth years of the reign of his late Majesty King William the Fourth, for regulating the carriage of passengers in merchant vessels. [3d July 1840.]

CAP. 22.—An Act to impose upon broad or spread glass the same duties of excise that are payable upon German Sheet Glass. [3 July 1840.]

CAP. 23.—An Act for granting to her Majesty, until the fifth day of July one thousand eight hundred and forty-one, certain duties on sugar imported into the United Kingdom, for the service of the year one thousand eight hundred and forty. [3d July 1840.]

CAP. 24.—An Act to repeal part of an act of the forty-third year of the reign of Queen Elizabeth, intituled "An act to avoid trifling and frivolous suits at law in her Majesty's Courts in Westminster," and of an act of the twenty-second and twenty-third year of the reign of King Charles the Second, intituled "An act for laying impositions on proceedings at law;" and to make further provisions in lieu thereof. Printed p. 197, *ante*. [3d July 1840.]

CAP. 25.—An Act to amend the act for the better ordering of prisons. Printed p. 292, *ante*. [3d July 1840.]

CAP. 26.—An Act to remove doubts as to the competency of persons being rated inhabitants of any parish, to give evidence in certain cases. Printed p. 214, *ante*. [3d July 1840.]

[We take the following act out of its numerical order, on account of its importance.]

No. IX.

COURT OF CHANCERY.

3 & 4 Vict. c. 94.

An Act for facilitating the administration of Justice in the Court of Chancery.

[10th August, 1840.]

Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, to make alterations in forms and mode of proceedings.—Whereas it would greatly contribute to the diminishing of expense and delay in suits in the Court of Chancery if the process, pleadings and course of proceeding therein were in some respects altered; but this cannot be conveniently done otherwise than by rules or orders of the judges of the said court from time to time to be made, and doubts may arise as to the power of the said judges to make such alterations as may be expedient without the authority of parliament; be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the

Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, may and he is hereby required, by any rules and orders to be from time to time by him made with such advice and consent as aforesaid, at any time within five years from the passing of this act, to make such alterations as may seem expedient in the form of writs and commissions, and the mode of sealing, issuing, executing, and returning the same, and also in the form and mode of filing bills, answers, depositions, affidavits and other proceedings, and in the form and mode of obtaining discovery by answer in writing or otherwise, and in the form and mode of pleading, and in the form and mode of taking or obtaining evidence, and generally in the form and mode of proceeding to obtain relief, and in the general practice of the Court with relation thereto, and also in the form and mode of proceeding before the Masters, and in the form and mode of drawing up, entering and enrolling orders and decrees, and of making and delivering copies of pleadings and other proceedings, and to make such regulations as to the taxation, allowance, and payment of costs, and for altering, superintending, controlling and regulating the business of the several offices of the Court, and also of collecting the fees payable to the Sutors' Fee Fund, and for directing payment into the Sutor's Fee Fund of the copy money now received by any of the officers to their own use, and otherwise for carrying into effect the said alterations, as to them may seem proper; and all such rules, orders and regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making and issuing of the same, or if parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until each House of Parliament shall have actually sat thirty-six days after the same shall have been laid before each House of Parliament as aforesaid; and every rule, order or regulation, so made shall from and after the time aforesaid be binding and obligatory on the said Court, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament, unless the same shall, by vote of either House of Parliament, be objected to.

2. *Additional officers, &c. may be appointed.*—And be it enacted, that from and after the passing of this act such additional officers, clerks, and messengers, in any of the present or future offices of the Court, as the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, or one of them, shall determine to be necessary and proper, shall and may be from time to time appointed.

3. *Present and future salaries and expenses of writing for the Court to be paid out of the Sutors' fund.*—And be it enacted, that the officers, clerks, and messengers who shall be appointed as herein-before directed, and the present officers, clerks, and messengers of the

said Court, shall receive by way of salary or additional salary for the performance of their several duties such annual sums as the Lord Chancellor and the Commissioners of her Majesty's Treasury shall from time to time fix and determine; and that the same, and the expense of copying and writing for the said Court or any of the officers thereof, shall be paid and payable under an order of the said Court of Chancery out of the interest and dividends of the government or parliamentary securities which may at any time be standing in the name of the Accountant General of the High Court of Chancery to an account entitled "Account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and to an account entitled "Account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them (but subject and without prejudice to the payment of any salaries and other sums of money by any act or acts of parliament now in force directed or authorized to be paid thereout); provided that nothing herein contained shall authorize the diminution of any of the several salaries to which the present officers, clerks, and messengers are now entitled.

4. *Compensation for diminution of emoluments to be made to officers out of the Suitors' Fund. Account of compensation granted to be laid before Parliament.*—And whereas the emoluments of some of the officers of the said Court may be diminished by the operation of this act, or by the rules and orders to be made thereunder, for which they may claim to have compensation made; be it therefore enacted, that it shall be lawful for the Commissioners of her Majesty's Treasury for the time being, or any three or more of them, and they are hereby required, within the space of six calendar months after any such claim shall arise and be made, by examination on oath or otherwise, (which oath they and each of them are and is hereby authorized to administer,) to inquire whether any, and if any what, compensation ought to be made to any officer or person claiming such compensation, the said commissioners having regard to the conditions on which the appointment of any such officer was made, or to any notice which at the time of such appointment may have been given to such officer that such office was to be holden subject to any provision by Parliament for the abolition or regulation thereof, but with full power for the said commissioners to investigate and determine whether, from the nature of the said offices or the mode of accession thereto, any such conditions or notice could have been properly made or given, and also having regard to the holding of any office, place, or situation by such officer under this act; and that in all cases in which it shall appear to the said commissioners that compensation ought to be granted, it shall be lawful for the said commissioners, or any three or more of them, by warrant under their hands to order and direct that such annual or other

compensation shall be made to the persons so claiming such compensation as aforesaid, or any of them, as to the said commissioners in their discretion shall seem just and reasonable; and all such compensations, whether annual or in gross, shall be issued and paid and payable by the said Accountant General of the said Court of Chancery, by virtue of an order or orders for that purpose to be made by the said Court of Chancery, out of the interest and dividends that have arisen or may hereafter arise from the government or parliamentary securities now or hereafter to be placed to the said two accounts in the Bank of England standing in the name of the said Accountant General of the said Court of Chancery, and entitled, "Account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and "Account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery" (but subject and without prejudice to the payment of all salaries and sums of money which by any act or acts now in force are authorized to be paid thereout): Provided always, that an account of all such compensations shall, within fourteen days next after the same shall be so granted, be laid upon the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of Parliament then next assembled.

5. *Interpretation clause.*—And be it enacted, that in the construction of this act the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

6. *Act may be amended this session.*—And be it enacted, that this act may be altered, amended, or repealed during the present session of Parliament.

No. X.

REMOVAL OF POOR.

3 & 4 Vict. c. 27.

An act to continue to the first day of August one thousand eight hundred and forty-three, and from thence to the end of the then next session of Parliament, two acts relating to the removal of poor persons born in Scotland and Ireland, and chargeable to parishes in England. [3d. July, 1840.]

3 & 4 W. 4, c. 40. 7 W. 4, & 1 Vict. c. 10.

Recited acts further continued.—Whereas an act was passed in the session of parliament held in the third and fourth years of the reign of his late Majesty, intitled "an act to repeal certain acts relating to the removal of poor persons born in Scotland and Ireland, and chargeable to parishes in England, and to make other provisions in lieu thereof, until the first day of May one thousand eight hundred and thirty-six, and from thence until the end of the then next session of Parliament:" And where-

as another act was passed in the seventh year of the reign of his said late Majesty, intituled, "An act to alter, amend, and continue for a certain period, an act for repealing certain acts relating to the removal of poor persons born in Scotland and Ireland, and chargeable to parishes in England, and to make other provisions in lieu thereof:" And whereas the provisions of the said acts have been found beneficial: And whereas the said acts will expire at the end of the present session of Parliament, and it is desirable that the same should be further continued: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the herein before recited acts, and all and every the provisions thereof, shall be and the same are hereby further continued to the first day of August, one thousand eight hundred and forty three, and from thence to the end of the then next session of Parliament.

No. XI.

WATCH RATES.

3 & 4 Vict. c. 28.

An Act to explain and amend an act of the second and third years of her present Majesty, for more equally assessing and levying Watch Rates in certain boroughs.

[23d July, 1840.]

2 & 3 Vict. c. 28; 5 & 6 W. 4, c. 76. *Recited act not to apply to boroughs in certain cases. Proviso.*—Whereas by an act passed in the session of Parliament holden in the second and third years of the reign of her present Majesty, intituled "An act for more equally assessing and levying Watch Rates in certain Boroughs," after reciting therein that by reason of the restrictions contained in an act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," the Watch Rate authorized to be levied upon those parts of the boroughs within the provisions of the said act which were regularly watched was insufficient for that purpose, and the deficiency in many cases was paid out of the borough rate, to which all parts of the borough, whether or not regularly watched, were liable; for remedy thereof it was enacted, amongst other things, that it should be lawful for the council of any borough named in either of the schedules to the said act of his late Majesty to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which should be watched by day and by night, and which from time to time, by any order of the council of any such borough, should be declared liable to such watch rate, provided that no such rate should exceed in any one year the rate of sixpence in the pound on the net annual value of the hereditaments rated thereunto, unless in those boroughs in which at the time of passing the said

act of his late Majesty the sum authorized to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of sixpence in the pound: And whereas the said act of her present Majesty was intended to apply to boroughs in which, from the deficiency of the borough fund, it had become or might become necessary that borough rates should be laid; but doubts have been entertained whether the same act may not apply to cases of Municipal boroughs in which there are borough funds sufficient for the purposes of defraying the expences of the constabulary force of such boroughs, together with all other expences payable out of the borough fund, with the aid of the amount only of watch rate which could be raised under the provisions of the said act of his said late Majesty, and without the aid of any borough rate; and doubts are also entertained whether by the said act of her present Majesty it is not imperative upon the council of each borough to levy in each borough a watch rate to the extent of sixpence in the pound; and in order to remove such doubts, be it enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the passing of this act the said act of her present Majesty shall not apply or be deemed to apply to any borough in which the borough fund is sufficient, with the aid of the amount only of watch rate which could be raised under the provisions of the said act of his late Majesty, and without the aid of any borough rate, to defray the expence of the constabulary force of the borough, together with all the other expences legally payable out of the borough fund, by virtue of the said act of his Majesty, or any other act or acts of Parliament: Provided always, that nothing in this act contained shall be deemed to take away or lessen, or to vary or affect, the particular benefit or rights to common lands and public stock, and to lands, tenements, and hereditaments, and to the rents and profits thereof, or to any sum or sums of money, chattels, securities for money, or other personal estate which are reserved by the said recited act of his late Majesty to every person who then was or thereafter might be an inhabitant of any borough, and also to every person who had been admitted or who might thereafter have been admitted a freeman or burgess of any borough if that act had not been passed, or who then was or thereafter might be the wife or widow, or son or daughter, of any freeman or burgess, or who had espoused or might thereafter espouse the daughter or widow of any freeman or burgess, or who had been or thereafter might be bound an apprentice: Provided also, that nothing herein contained shall render the borough fund of any borough liable to any expences with which such borough fund was not chargeable before the passing of the said recited act of her present Majesty.

2. *Limiting amount of watch rate to be annually levied.*—And be it enacted, that the

amount of watch rate to be levied by the council of any borough under the authority of the said recited act of her present Majesty shall be at the discretion of each such council, but not exceeding in any one year the sum of sixpence in the pound, as limited by the same act.

CAP. 29.—An Act to extend the Practice of Vaccination. [23d July, 1840.]

CAP. 30.—An Act for the more equal assessment of Police Rates in Manchester, Birmingham, and Bolton, and to make better provision for the Police in Birmingham. [23d July, 1840.]

COMPENSATION TO CHURCH LESSEES.

Sir,

THERE is an article in a late number, vol. 20, p. 227, entitled as above, in which the writer has considered the merits of proprietors of this description, and decided in favour of their claim to compensation, in the event of the disposal of this species of property, in pursuance of the schemes which have lately been agitated in Parliament and elsewhere for that purpose. Indeed it seems to be admitted on all hands that the holders of this kind of property will be entitled to some compensation in case the contemplated measure shall take place, but it is surprising on what slender grounds the advocates for this relief are content to rest the claims of the parties for whom they plead. In the article above referred to it is said that what is called "the tenant-right," rests greatly "on favour," and it seems to consider it as having been founded on a mistaken idea of "the usage of renewal" having created a right to demand a renewal. This seems to have been the notion of Mr. Butler in his elaborate note on Coke Litt. 293, b. s. 9, and such it would seem was the view taken of it in the cases of *Lee v. Vernon*, and *Watson v. Master, &c. of Hensleigh Hospital*, as I collect from the article I refer to. But I shall now proceed to shew that the claims of these parties rest on a much surer basis than any which the advocates alluded to seem to have thought of. It is to be observed, that what is called church property is the only species of land which we have now to treat of. Now the law by which bishops, deans, and other ecclesiastical corporations sole, are authorised to lease out their lands beyond the period of their own lives or incumbencies, is the statute of 32 Henry the 8th, c. 28, called "the Enabling Act." That statute enacts, amongst other things, that all persons seized of an estate in fee simple in respect of their churches, with the exception of parsons and vicars, may, without the consent of any other person, bind their successors. But then there must many requisites be obser-

ved, which the statute specifies, otherwise such leases are not binding. Amongst these, are the following, 1st, that the lease must be begin from the making, or day of the making, and not at any greater distance of time; 2d, if there be any old lease in being, it must be first absolutely surrendered, or be within a year of expiring. 3d, It must be either for twenty-one years, or three lives, and not for both. 4th, It must not exceed the term of three lives, or twenty one years, but may be for a shorter term. 5th, It must not be made of any reversion, and must be for lands and tenements most commonly letten for twenty years past. 6th, The most usual and customary term or rent for twenty years past must be reserved yearly on such lease. It is an undoubted fact, that by far the greater part, if not the whole, of church leases, are granted under the authority of the above statute, and that chiefly for lives, and most of them have continually been in a course of demise from the 23rd year of King Henry the 8th down to the present time.

Some ecclesiastical corporations aggregate, and all parsons and vicars, may be under the regulation of other statutes, but the restrictions to which they are subject not varying much from those contained in the act of Henry 8th, I shall not stop to notice the distinctions. Now, observe, that by the terms of the enabling act, the bishop, dean, &c., not being able to grant any lease to take effect *in futuro*, nor, if there be any lease in being, without a surrender thereof, it follows that the bishop, &c., can never deal with the estate whilst it is out on lease, except by treating with the existing lessee or assignee—he can never bring the estate into the market,—and the probable duration of his own interest in the lands being only for his own incumbency, and at most only for the term of his life, which in almost all instances is far from a youthful one, is much less than that of the existing tenant, who probably has two lives remaining, one, if not both of whom, being younger than the bishop. The consequence is, that he is at the mercy of the existing lessee or assignee, and must deal with him on his own terms, unless he chuses the unequal risk of running his life or incumbency against two outstanding and probably better lives than his own. A very moderate fine is generally the result, perhaps one or two years' purchase less than would have been obtained if the estate could have been brought into the market, and sold to the best bidder. It is customary for the lessee for twenty-one years to renew at the expiration of every seven years, and there are thus always fourteen years at least against the bishop, which is considered to give a correspondent advantage to the lessee of the term with that of the lessee for lives. The like is the case with houses in corporation or market towns, which are demisable for forty years and renewable at intermediate periods. Those privileges are what is called "the benefit of renewal," which is a more appropriate term than that of "tenant right;" although it is unquestionably an interest

of considerable value, and has long been the subject of marriage settlement, devise, mortgage, and absolute sale, is founded on a practice of more than three hundred years' duration, and gives additional value on the sale of such an estate, beyond that of a tenancy for lives under a lay-lord, by three or four years' purchase. I am quite a disinterested observer of what has been in agitation with regard to this species of property, being neither a lessor nor a lessee, nor an assignee of any church lands; but I have all along thought that this "benefit of renewal" is the very thing which our modern sages have discovered to be a property belonging to nobody, and therefore convertible to the factious purposes of anti-church-rate declaimers and others, who are always glad of an opportunity, which they think this to be, of giving a blow to the Established Church. However, as I said at first, it seems to be admitted on all hands, that the holders of this sort of property are entitled to compensation. Now, as the measure of that compensation must in justice be to the extent of the benefit of which the party will be deprived, only let that be done, and at the same time keep the rights of the church inviolate, and the scheme will die away of itself, for nothing will be left to appease the clamour of the anti-church-rate party, or feed the ravenous appetite of the others.

I am aware of the argument respecting *timber and mines*, but consider it quite inadequate to the support of such a sweeping measure as that in question,

J. P.

BANKER'S DRAFT PROVED AS A CODICIL.

Mr. Editor,

BEING much startled at what is laid down by your correspondent, p. 280, *ante*, respecting the banker's check being proved as a will, and fancying there must be many special circumstances connected therewith, I trust that the name of the case, if reported, will be communicated. Several questions of great importance arise in this case; among the foremost, that if the check can be really proveable, who is to bear the burden and expense of the probate and legacy duties? The other points that forcibly present themselves I shall reserve until I shall be favoured with a reference to the case.

JURIS CONSULTUS.

[The correspondent who furnished us with a statement of the case, informs us that the case referred to, that of a banker's draft supported as a codicil, occurred in the year 1818, under the will of Mr. Rush, proved in that year.—The decree was obtained in the Prerogative Court, in or about December, 1818. The draft was given by Mr. Rush to Mrs. Murry, on Messrs. Cox & Co., bankers, Oxford. Its amount was 250*l.*, and the expense of proving it was paid by the executors. The legacy duty was of course payable by the legatee. *Ed.*]

PARLIAMENTARY AGENCY.

Mr. Editor,

I HAVE read the letter from your correspondent on the subject of "Parliamentary Agency by persons not Solicitors," and in justice to that body I feel bound to answer him. First, with regard to the responsibility: He presumes to advance that there is but little (if any) labour on the part of the agent, in passing an opposed bill through parliament: allow me to say that it is well known amongst the profession, and I have in the course of my business received many proofs of the great trouble and anxiety experienced on such a course. With regard to the outlay, in many cases, parliamentary agents are obliged to advance the fees payable in parliament from their own resources; and in many cases, as I can most readily attest, those amounts have, through tardy repayment and ultimately by the insolvency of the solicitor, been irrevocably lost. Next, the London agency offices have found that they could not undertake parliamentary agency in consequence of the great loss of time in attending committees and other matters. With regard to the allowance made by parliamentary agents generally, I have reason to believe that in general it is considerable, and I must say that on that point your correspondent has been misinformed; on the contrary, I hear that in most offices the interests of the solicitor are materially advanced. The fact has also been ascertained that the general business of a solicitor who practises as an agent in parliamentary business decreases; (we will allow that this parliamentary business increases); but there is no doubt that the great time and trouble dependent upon parliamentary agency unfit the solicitor for any other business. It must be stated also, that, as is the case with other professions, so it is with that of a parliamentary agent, viz., an apprenticeship is required, for, however simple and straightforward his business may appear to be, yet the "adherence to well-known forms and regulations," (certainly a slight matter!) and a thorough acquaintance with the constantly-changing standing orders of both houses of parliament, demand a complete study; and it is well known that the practice of years does not always effect what is required.

A SOLICITOR.

SELECTIONS FROM CORRESPONDENCE.

DUTIES OF ARTICLED CLERKS.

HAVING been requested by the gentleman to whom I am articled to pay a quantity of accounts, not in the least connected with the business of the office, but, in fact, relating to a society, to which he has been appointed honorary secretary, and to which there is also an acting secretary, I peremptorily refused; not considering myself called upon to parade the town with a parcel of bills. Can he, in this

instance, compel me; or can he, in any case, oblige me either to collect rents or accounts belonging to the office. E. L. A.

AFFIRMATIONS.

Mr. Editor,

In reference to the article "Affirmation" in the last number of "The Legal Observer," I take leave most respectfully to call your attention to 1 & 2 Vict. c. 77.

And am Sir, your most obedient and humble servant.

A CONSTANT READER.

Bristol.

[We are obliged to our correspondent. The act referred to (printed 16 L. O. 492) provides for the conscientious scruples of persons, who have once been quakers, but having ceased to be so, still retain a conscientious objection to an oath. By the act referred to, they are permitted to affirm, and the difficulty in the case of *Reg v. Doran*, ante, p. 292, is thus provided for.]

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—PAYMENT OF MONEY INTO COURT.

The Court will not order the payment of a sum of money into Court, where the title of the plaintiff is disputed by the defendant, even though it may appear from the defendant's answer that the sum claimed is in his hands.

The bill in this case had been filed to carry into effect the trusts of the will of Mr. Charles Graham, the testator in the pleadings named, against his surviving executor, and the representatives of a deceased executor, and it prayed that the trusts of the will might be performed,—that the defendants might account for a sum of 21,700*l.*, alleged by the plaintiff to have come to their hands on account of the testator's estate, and that such sum might be applied towards satisfaction of two several legacies of 20,000*l.*, bequeathed by the testator, and in which the plaintiff claimed an interest. The defendants having put in their answers in which they admitted the 21,700*l.* to have been received by them, a motion was now made to have that sum brought into Court and placed to the credit of the cause.

Jacob and Parry, for the plaintiffs contended, that the admissions in the defendant's answers were quite sufficient to entitle the plaintiff to the order sought to be obtained by him.

Wigram and Colville, for the defendant Graham, opposed the motion, and after referring to the prayer of the bill, insisted that the plaintiff had not shewn sufficient grounds for the interference of the Court, previous to the cause being heard. Besides which, the plaintiff claimed under certain limitations of the testator's will, as third son of the testator's niece, but a child had lately been born, who had a prior claim to that of the plaintiff, and there

was no pretence therefore for the present application.

Richards and Smythe, for the defendants the Davidsons' also opposed the motion.—The sum in question had arisen from an arbitration relative to certain claims of the testator, made in 1817 by his executors, and no reference was asked, to determine whether it was beneficial to his estate to abide by the arrangement effected by the executors, in pursuance of which the award was made. If that transaction stood, the Davidsons admitted the sum in question would be in their hands, but, if it were opened they did not believe so large an amount would be recovered. The defendants also disputed the title of the plaintiff, and it had been recently decided in the case of *Doubless v. Flint*, first heard before his Honor, and subsequently on appeal before the Lord Chancellor, that where sufficient reasons are shewn by the answer, for raising a question on the plaintiff's title, the Court will not interfere on a summary application of this description. Here there were two insuperable objections to the motions: 1st. There was no admission in the answer, under which the Court could order the money to be brought into Court; and 2dly, there was a dispute as to the plaintiff's title. The bill also prayed, not only that the Davidsons should account for the 21,700*l.*, but also for interest from the time it had been received, although they had paid that interest to George Graham, the surviving executor of the testator. And again with regard to the child recently born, whose title was superior to that of the plaintiff, a supplemental bill had been filed for the purpose of bringing him before the Court, but the plaintiff had not made the Davidsons parties to their bill, which was therefore defective.

Jacob in reply.—It has been objected, that because the bill does not state whether the arrangement made in 1817 was proper or not, the order ought not to be granted; but if there is anything in this objection, the defendants may avail themselves of it, by having an enquiry directed as to whether it will be beneficial to the parties interested in the testator's estate, that the arrangements should be adopted. The defendants have also proposed, that in the event of the money being paid into Court, they should receive the interest to arise from it, but it is not usual to give an accounting party such an advantage.

The Vice Chancellor.—The great question is, whether the sum mentioned in the notice of motion ought to be paid into Court; and in order to arrive at a correct conclusion on this point, it is necessary to see whether the title of the plaintiff is admitted. Now on looking at the answer of the Davidsons, I find that the title is not admitted. It has been urged that a sufficient admission can be found in the answer of the defendant Graham; but, although this may be so, it cannot bind the other defendants. The application is made by the plaintiffs against the defendants, the Davidsons, as the representatives of a deceased executor; and although it may be perfectly true that Graham may ad-

mit the plaintiff's title, still if the Davidsons do not, the application cannot be granted. [His Honor then read a passage from the answer of the Davidsons, in which they stated they could not say whether the plaintiff was the third son of the testator's niece, and then continued.] The title not being admitted, I can make no order against the Davidsons.

Richards asked for the costs of his clients, but his Honor said, he did not think the motion ought to be refused with costs, because *Graham* admitted the plaintiff's title.

Munro v. Graham, August 4th, 1840.

Queen's Bench.

[Before the Four Judges.]

EJECTMENT.—EVIDENCE.—MORTGAGE.— SURRENDER OF COPYHOLD.

A deed of mortgage contained the following stipulation: "that J. B. shall, during his occupation, pay for the same to J. G. (the mortgagee), the yearly rent or sum of 50l.," and then went on to give "the same remedy for the recovery of the said sum as a landlord has for the recovery of his rent, provided that nothing herein shall prejudice J. G. in his right to enter and take possession of the premises, and to evict J. B. at any time after default." Held, that this clause did not create the relation of landlord and tenant, but merely added a remedy to that which the mortgagee had before, so that ejectment was maintainable after a distress made.

Where a surrender has taken place out of Court, and an admittance has afterwards been made thereon, the court rolls are the best evidence of that surrender and admittance, and may be received in evidence for the purpose of proving such surrender, though they are without a stamp.

This was an action of ejectment, and the verdict having been for the lessor of the plaintiff, a rule for a nonsuit was obtained, on the ground that there was no sufficient evidence of the plaintiff's title. At the trial of the cause in Norfolk, before Mr. Justice *Vaughan*, an original surrender made out of Court, by *Burgess*, the former tenant, to *Garrod*, was tendered in evidence, but was objected to on the ground that it was not properly stamped. To supply the evidence thus objected to, the court rolls themselves, on which this surrender was enrolled, were offered, but they were also objected to; because as this was a surrender out of Court, the court rolls, which were only made up from some other document, could not be evidence of such a surrender. The learned Judge admitted the evidence, and the rule was subsequently obtained on that account. The rule was also drawn up as for a new trial, on the ground that there had been a distress made, affirming the tenancy; and the question, therefore, intended to be raised was, whether the relation of landlord and tenant existed between these parties. The mortgage deed executed between these parties contained

the following clause of distress: "Provided that if *J. B.* shall, on the 11th of January, pay to *J. G.* the sum of 850*l.* with interest, &c. and all such sums, &c. and interest shall at any time or times hereafter, during the continuance of such security, become due and owing from *J. B.* to *J. G.*, then these presents, and the bond, &c. shall be void, otherwise, &c. and it is declared and agreed between the parties, that *J. B.* shall, during his occupation, pay for the same to *J. G.* the yearly rent or sum of 50*l.*" And the deed went on to give "the same remedy for the recovery of the said sum as a landlord has for the recovery of his rent, provided that nothing herein shall prejudice *J. G.* in his right to enter and take possession of the premises, and to evict *J. B.* at any time after default." The distress was levied in November, 1837. The demise in the declaration was in April, 1838, and the plaintiff was not admitted till July, 1838.

Mr. Serjeant *Storks* and Mr. *Byles* shewed cause. The presentment in Court of a surrender previously made out of Court, makes that surrender an original act of the Court, and the roll becomes an original entry, and does not require a stamp. 48 Geo. 3, c. 149. *Doe d. Priestley v. Calloway*,^a where the draft of an entry produced from the muniments of the manor was admitted, and the parol testimony of the foreman of the homage jury was received in support of it. It is clear, therefore, that the roll itself must be evidence of such surrender and presentment. The surrender being thus perfectly proved in one way, no objection arises that it was also proved in another way, which might have been perfect if it had stood alone, but which cannot impeach the proper proof of it, that has been otherwise given. [Mr. Justice *Patteson* referred to *Doe d. Hawthorn v. Mee*.^b] That case shews that where a surrender is made out of Court by a deed of surrender, the copy of the court roll is evidence of that surrender, though the 48 Geo. 3, c. 149, requires that in such cases the deed of surrender, or a memorandum thereof, (and though the court roll itself is not stamped,) shall be stamped. With reference to this last part of the case, it was also there declared that the Court could not depart from the ordinary rules of evidence, though by adhering to them the revenue might be injured. As to the other point, the clause of distress in this lease does not create a tenancy in the ordinary sense of that term, but merely gives a remedy for payment of the interest, similar to that of a landlord for rent; or if it does create a tenancy, then it is clear that after the distress taken here, and before the ejectment brought, there was another breach, namely, the non-payment of another sum of money, on which the ejectment may be maintained; and in either case the objection is answered.

Mr. *Kelly* in support of the rule.—The last point may more conveniently be first discussed.

^a 6 Barn. & Cr. 484; 9 Dowl. & Ry. 518

^b 1 Nev. & M. 424; S. C. nom. *Doe v. Cawthorne v. Mee*, 4 Barn. & Ad. 617.

The clause in the mortgage deed does amount to the creation of a tenancy, and the plaintiff by distraining has treated the party as his tenant; he has himself put a construction on the deed, and cannot now retract it. The word "reserve" can only be applicable to rent; there is no stipulation as to the mode in which the surplus that may be obtained under the distress is to be made use of in reduction of the debt secured by the mortgage, and the power of distress stands therefore a mere naked power of distress, such as exists between landlord and tenant. The plaintiff might distrain for more than was due, and as it is contended on the other side, have at the same time a right to turn the defendant out of possession. These two rights would be inconsistent with each other, and both cannot therefore be allowed to the plaintiff. The interest becoming due after a distress, does not make a new breach of the covenant in the mortgage deed, so as to incur a forfeiture, and give the plaintiff a new right to enter and evict the defendant. [Mr. Justice *Patteson*.—There are no words of demise in the deed, nor is there any thing said as to the defendant having the right to occupy so long as he pays the rent.] But that is implied; now as to the proof of the surrender. There was no denoting stamp on the surrender, which there ought to have been, as it was a surrender taken out of Court. In order to prove a copyhold title so as to recover in ejectment, it is absolutely necessary that the plaintiff should prove the surrender itself, and the admittance on that surrender. The proof of one part alone, namely, the entry of the surrender on the court roll, will not be sufficient. Here, the surrender being out of court, was not proved by the entry on the court roll. The roll itself is only secondary evidence of the surrender, and all the cases shew that where a surrender is given in evidence, the document which is to prove it ought to have a denoting stamp.

Lord Denman, C. J.—This is an ejectment brought by a mortgagee, and one question is whether he had forfeited the right to bring it in consequence of a particular provision in a deed to the following effect, (His lordship read the clause in the mortgage deed). The sum thus secured as rent, was not precisely the amount of interest which was to be secured by the mortgage. In the deed is the further stipulation, that this reservation of rent shall not prejudice the right of the mortgagee to enter and take possession of the house and premises mortgaged, and to evict therefrom the mortgagor (whom the defendant represents) at any time after default made in the payment of the money thereby secured. This language is not quite correct, but still it is capable only of one construction, and that is that though there are words introduced in another part of the deed, which might appear to create the relation of landlord and tenant, and so prevent the plaintiff as mortgagee, from levying for what is due, and at the same time evicting for the default; yet, here is an express provision, that whatever may be done under

the power in the deed, the mortgagee shall not be prejudiced in his right to enter and take possession; he has, therefore, the same rights under the deed as he had before the distress. The word *reserve* is referred to, as having a particular meaning, but the fact of such a power having been acted on, shall not, by the very terms of the deed, prevent the mortgagee from recovering against the mortgagor in the same manner as if there had never been a distress. This is the only reasonable construction to put on the proviso, and it shews that the mortgagee has established a sufficient title to maintain this ejectment. There is another objection as to the evidence; this is a case of an admittance to a copyhold estate. The court rolls are produced as proof of the surrender, and on the one hand it is alleged that that proof is sufficient, while on the other it is said, that there were other deeds connected with this surrender, and that these other deeds ought to have been produced. They were offered in evidence, but they were not upon a proper stamp; they were objected to on that account. The first question then is, whether the first document, the deed of surrender which was made out of court, ought not to have a denoting stamp, and cases were cited where the necessity of having such a stamp had been established. These, however, do not exactly apply here, for here the proof of the surrender is not by the production of the deed of surrender, which might give rise to the argument about the denoting stamp, but by the production of the court rolls, which are made to constitute the plaintiff's title, and which do, in my opinion, sufficiently make it out. I think, on the whole, that it is clear that evidence was put in of a nature sufficient to make out the title of the plaintiff, and to sustain the verdict.

Mr. Justice *Patteson*.—This is a question of the construction of a provision in a mortgage deed, of a kind not generally inserted in such deeds. This provision may be a very proper one, but at first sight it seems rather difficult to deal with it; for when we talk of the reserving rent, I do not quite understand how that can be, without the existence of the relation of landlord and tenant. We know that where deeds convey the fee simple to a person in whose favour a mortgage is granted, the payment of the money thereby secured is not a reservation of rent, but a rent-charge. This, however, does not appear to be a rent-charge. I do not see how these clauses in the deed can, according to our ordinary construction of such clauses, have any operation without there being the relation of landlord and tenant. But then comes the question, whether such was the intention of the parties. Something or other must, it is clear, be put into the mortgage to enable the mortgagee to ensure to himself the regular payment of what is due to him. What has been put in here gives him more than ordinary remedy. This clause carefully provides that the mortgagee may distrain on the mortgagor, and yet may afterwards treat him as a trespasser, and eject him. Though, therefore,

there may be difficulties in dealing with a clause framed in these general terms, yet the object here cannot well be doubted. The effect of the latter part of the proviso is, that though the mortgagee may distrain as a landlord, yet that his rights, in other respects secured by the deed, shall not be affected thereby; in short, that the mortgagor is at his mercy at any time. That seems to me to be the intention and meaning of this clause. It is put in for the benefit of the person lending the money, and is so put in by the consent of the mortgagor, who wished to add something to the remedy which he had before. This is the interpretation which, on the whole, we are bound to give to the clause. Then comes the question, whether this stamp on the surrender is sufficient? I think that it being admitted that the rolls of the manor are the proper evidence of a person being a tenant of the manor, we must consider that there is an end of that question. A copy of the court rolls may be given in evidence, but then it must have a stamp as such. But if the rolls themselves are the best evidence that can be given, how can there be an objection that no other evidence was given? I do not mean that the rolls are conclusive evidence. I do not mean to say that it was not competent for the party to shew that there had not been a proper stamp on the instrument of surrender itself; such a stamp as must be impressed on it before it can be entered on the court rolls. Here it seems the stamp was a proper *ad valorem* on the deed which contained the copy. There was also a stamp on the surrender, sufficient for it as a surrender—that was a stamp of 1*l*. But then it is said that it had not a denoting stamp, which it ought to have had, as being a surrender taken out of Court. If it had been required for the purposes of evidence, it ought to have had that stamp, but that is not necessary here, for that document was not required to be given in evidence, as the party relied on the roll itself. The plaintiff, therefore, has shewn a good title to maintain ejectment, and has sufficiently proved his title. The rule must consequently be discharged.

Mr. Justice Williams concurred.

Rule discharged.—*Doe d. Garrod v. Ottley and another, assignees of Harper, a bankrupt*, T. T. 1840. Q. B. F. J.

Eschequer of Pleas.

WITNESS.—SUBPŒNA AD TESTIFICANDUM.—
DISOBEDIENCE.—CALLING.

If it can be proved that a witness who has been subpoenaed is at such a distance from the Court as to be unable to attend the cause when the trial comes on, that is sufficient to entitle the plaintiff to bring his action against him, although he has not been called on his subpoena.

Crowder and Swann shewed cause against a rule nisi obtained by Busby, for setting aside the nonsuit in this case, and for a new trial. It was an action on the case for not attending to give evidence in obedience to a writ of sub-

pœna duces tecum. The defendant pleaded not guilty, and other pleas, denying certain allegations in the declaration, but there was no plea alleging that he had not been called upon the subpoena. At the trial, before Lord Abinger, C. B., at the sittings after Hilary Term, it was opened by the counsel for the plaintiffs, that the defendant had not been called upon his subpoena, but that it would be satisfactorily shewn that he was absent from Court when the cause was called on, and that in consequence of such absence the record was withdrawn. Upon this his Lordship expressed an opinion that to render the defendant liable it was necessary to prove that he had been called on his subpoena, and the plaintiffs were nonsuited upon the admission by defendant's counsel that such evidence could not be given.

Crowder and Swann submitted that the nonsuit was right, as it appeared that the defendant had not been called on his subpoena.

Lord Abinger, C. B.—How did it become a question of fact whether he was called or not? There was no plea on the record alleging that the defendant had not been called on his subpoena.

Parke, B.—The declaration does not allege that the defendant was called. If the calling be essential, the objection would properly be to the declaration for the omission of that allegation.

Crowder.—That would be so if the declaration had merely alleged that the defendant did not “appear,” but the allegation is, that he did not “appear according to the said writ of subpoena.” The duty imposed upon a witness by the writ is conditional, namely, to appear if called upon in Court; and as the plea of not guilty denies the breach of duty, the question whether the defendant was called or not is raised by that plea. A plea, simply denying that he was called, might have been bad, as amounting to the plea of not guilty.

Lord Abinger, C. B.—The first question is, whether a calling upon a subpoena is necessary in any case, and if necessary in some cases, whether it be necessary when the witness, at the time he is wanted, is actually absent from Court, when such a ceremony must be perfectly nugatory. At nisi prius, I confess, I had a strong opinion of the necessity of so calling a witness, on account of the uniform practice of doing so. A witness who cannot be seen, or might not be found in Court, will sometimes make his appearance in the witness box when called upon his subpoena.

Crowder.—*Malcolm v. Kay*,^a where the Court of Common Pleas refused to grant an attachment for disobedience to a subpoena, because the witness had not been called upon his subpoena, may perhaps be considered to be shaken by *Barrow v. Humphries*,^b and *Dixon v. Lee*;^c but neither of these cases is an express decision to the contrary of *Malcolm v. Kay*, as they were determined upon the merits. In

^a 3 Moore, 222.

^b 3 B. & A. 598.

^c 1 C. M. & R. 645.

Hopper v. Smith,^a the witness was called according to the uniform practice. The course of practice, and the usual precedents, shew that the law requires such a proceeding. The rule is one of great convenience, and founded upon good reason, for a witness may be watched out of Court for a short time, the cause may then be designedly called on during his absence, and the mere fact of such absence at the moment may be adduced as an act of disobedience to the writ, whereas the time occupied in calling him upon it might be sufficient to enable him to make his appearance in strict obedience to the writ, that is, for the purpose of giving evidence.

Thesiger and *Busby* supported the rule, and submitted that the duties of a witness are prescribed by the writ of subpoena. Upon this principle it was held, in *Collins v. Godefroy*,^c that a witness must attend without a compensation for loss of time; and in *Mullett v. Hunt*,^f that he is guilty of disobedience if absent when the cause comes on, and before the jury are sworn, and consequently before he can give evidence. *Amery v. Long*^g may also be referred to, as illustrative of the same principle. Then what is the requisition of the writ as to the time of the witness's appearance? It contains a stringent command, that "all other things being set aside, and ceasing every excuse," he appears in Court on a day named, and from day to day until the cause be tried. The requisition is absolute, not conditional. The proposition contended for on the other side, that he may absent himself until the moment when he is formally called upon by the officer of the Court, is totally at variance with the writ.

Alderson, B.—The difficulty put upon you by the other side is, that "appear" means upon a view of the whole writ, "appear when called upon," the object of the writ being, to procure for the party issuing the writ the benefit of the witness's testimony, when it is required.

Thesiger.—That would not shew that the calling him on the writ is essential, for *Mullett v. Hunt* is a clear authority that the absence of the witness before the time when his testimony is required, is a disobedience to the writ. Calling him therefore upon his subpoena, is not a condition, precedent to his obligation to appear, but a convenient mode of ascertaining his presence or absence at a particular time. *Res v. Stutch*,^h *Dixon v. Lee*,ⁱ were also referred to.

Lord *Abinger*, C. B.—The rule must be absolute for a new trial, although we do not wish to be understood, as laying down a rule that an action is maintainable in every case of the absence of a witness, at any time during an assizes or sittings. The subpoena requires

a witness to appear from day to day, and his presence there is a duty which he owes to the Court; but as regards the party summoning him, it is sufficient if the witness appears, and is ready when wanted to give evidence. We are of opinion that the ceremony, of calling the witness is not essential to the cause of action, but merely proof that he is not present if he fails to appear at the proper time. If a witness was known to be abroad when the trial came on, he would be equally disobedient to the writ, whether he was called or not. Calling him would therefore be only a convenient mode of proving the absence of the witness. We think therefore that a new trial ought to take place.

Parke, B., concurred in the opinion of the Lord Chief Baron. The question was, what was sufficient proof of the witness being absent contrary to the exigency of the writ? He was of opinion, that it was not absolutely necessary to call the witness on his subpoena; perhaps, that course might be convenient, in order to prove that the witness did not appear, but if he was at a considerable distance from the Court, it would be useless as a warning to the witness. Possibly the objection in the present case would have been more properly taken by a demurrer to the declaration, but after verdict it would be inferred that all necessary evidence to shew that the witness had been disobedient to the writ, had been adduced.

Alderson, B. concurred. The object of the ceremony of calling the witness on his subpoena was, to render that quite certain, which might be left doubtful by other evidence.

Rolfe, B.—In a case of this kind, it is to be observed that the writ only demands the presence of the witnesses, in order to give evidence, without stating anything as to his being called. Calling therefore, could not be considered as the essential, or the only mode of shewing that he was absent.

Rule absolute.—*Lamont and another v. Crook*, T. T. 1840. Exch.

NOTICES OF MOTIONS RELATING TO THE LAW FOR THE NEXT SESSION OF PARLIAMENT.

Major *Chetwynd*.—Select Committee, to inquire into the administration of the Law, Civil as well as Criminal, and especially on the Circuits.

Mr. *Ewart*.—Bill to extend the Copyright of Designs for Articles of Manufacture.

Mr. *Ewart*.—Proposed Resolutions, as to Private Bill Committees, and Select Committees:

1. That it is expedient that Committees on Private Bills should be approximated, more nearly than they now are, to judicial tribunals, and exempted, as much as possible from all motives of local and personal interest:

And that the responsibility and efficiency of

^a 1 M. & M. 115

^c 1 B. & Ad. 950.

^f 1 C. & M. 752.

^g 9 East, 473.

^h 3 D. P. C. 368.

ⁱ 1 C. M. & K. 645.

Committees of this House would be promoted by diminishing the number of members composing them.

2. That, with a view of attaining these objects, the number of members comprising Committees, on opposed Private Bills, be reduced to seven :

3. That such seven members be appointed by the Committee of Selection, after the second reading of such Bills :

But that, previous to such appointment, the Committee of Selection do ascertain from each of such seven members that he is willing to serve, and that he is, neither through his constituents, nor himself personally, interested for or against the Bill in question :

And that, in case he is unable to serve, or is interested as aforesaid, the Committee of Selection do appoint some other member to serve in place of him.

4. That the Committee of Selection appoint no member to serve on more than one such Private Bill Committee at a time.

5. That the number of members composing Select Committees be likewise reduced to seven ; except on special cause shewn to the satisfaction of the House for extending the number to more than seven.

6. That, previous to the naming of any such Select Committee, the member who moves for its appointment shall communicate with the Committee of Selection ; in order to avoid, as much as possible the appointment of members to serve on such Select Committee who may already be fully occupied by a Private Bill Committee, or by other Select Committees.

Sir Charles Grey.—Bill to explain and amend some provisions of the Act 5 & 6 Will. 4, c. 76, intitled, "An Act to provide for the regulation of Municipal Corporations in England and Wales.

Mr. Hawes.—Bill to disqualify, after the present Parliament, persons holding certain judicial offices from being elected or sitting as Members of the House of Commons.

Mr. Hodges.—That he will, at the commencement of the next Session of Parliament, again introduce a "Bill to amend the laws relating to the Constabulary Force in England and Wales."

Mr. Hodgson Hinde.—To propose the modification of the standing order which requires the promoters of Railways to make a deposit of 10l. per cent. on the capital to be raised.

Mr. Hume.—Bill to alter and amend the Reform Act for England and Wales, (2 & 3 Wm. 4, c. 45), so as to extend the suffrage to all householders, and to all occupants of parts of houses rated to the poor ; to afford protection to the Voters against intimidation and bribery ; to shorten and fix the duration of Parliaments.

Mr. Fitzroy Kelly.—Bill for the further Abolition of the Punishment of Death.

Mr. Fitzroy Kelly.—To call the attention of the House to the subject of Secondary Punishments under the Law as now administered.

Mr. Fitzroy Kelly.—Bill to enable the Free-men of certain Boroughs to vote in the election of Town Councillors for such Boroughs.

Mr. Langdale.—To bring under the consideration of the House, the case of persons under twenty-one convicted of Felony, with a view of securing to them, more especially after the expiration of the term of their imprisonment, or in case of its remission, the same liberty of conscience which is secured to all other classes of her Majesty's subjects.

Mr. Milnes.—Bill to alter and modify the restrictions of the law of mortmain, as far as they regard all Spiritual Corporations.

Dr. Nicholl.—To move, that the expense of making out, printing, and otherwise preparing or producing returns for this House, and whether the same be incurred by public Officers, Clerks of the Peace, or other functionaries or individuals, be indorsed on each return.

Captain Pechell.—To call the attention of the House to the Laws relating to the Licensed Victuallers, with the view of relieving them from the several liabilities and restrictions which so injuriously affect their trade.

Mr. James Stewart.—Address to her Majesty, that it may be her Majesty's pleasure to cause a Commission to issue to inquire into the expediency of adopting some plan for Consolidating and Digesting the Common Law of England, as contained in the Reports of the Superior Courts of Law and Equity, and for improving the present mode of reporting such decisions.

Sir Edward Sugden.—Select Committee to inquire into the administration of Justice in the Courts of Chancery and Equity Exchequer, and in the House of Lords, and the Judicial Committee of the Privy Council, and to report their opinion thereon.

Mr. Emerson Tennant.—Bill to extend the Copyright of Designs for Articles of Manufacture.

THE EDITOR'S LETTER BOX.

We shall be glad to receive the remainder of the communication of K. before we publish the first part.

G. S. will observe, by our last week's number, that he has been anticipated by other Correspondents. We are, however, obliged to him.

We still think that we ought not to undertake the responsibility of answering points in Conveyancing, or other practice, which seem properly to belong to counsel or special pleaders.

We trust that we have now met the wishes of our subscribers, as to the statutes of the last session. Our next number will comprise several other Law Acts.

The letters of "A Country Solicitor;" G. H. L.; "A Subscriber;" and "Civis," have been received.

The Legal Observer.

SATURDAY, AUGUST 29, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CONTRUL OVER RAILWAYS.

A SELECT COMMITTEE was appointed in the last session on railway communication, and it was moved, and carried with one dissentient voice, by Sir Robert Peel, “that in the absence of any effectual check from the operation of free competition on their respective lines, this Committee thinks it advisable to subject this monopoly to some general superintendence and control, and that this control would be most advantageously entrusted to some department of the executive government.” The Third Report of the Committee explains the reasons and necessity of these resolutions, and we shall quote a portion of this Report.

“At the time, when the first acts by which the sanction of parliament was given to any extensive lines of railway communication, the subject was very imperfectly understood; powers were consequently conceded to these companies, which counteracted and rendered of no avail the evident purposes of the legislature, whilst on the other hand conditions were imposed on them, which tended seriously to endanger the safety of the public, and to impair the efficiency of this new means of intercourse. The original error consisted in a total misapprehension of the best means of providing locomotive power on railways: parliament at first considered that this might be safely left to be supplied by public competition; and its measures were accordingly framed with the view of affording a free scope to all persons who might be willing to engage in such an undertaking. The general impression of parliament appears to have been, that there existed a close analogy between the principles which govern the means of conveyance by railway and by canal, and this indeed appears to have been the opinion of the railway proprietors themselves; parties soliciting railway bills have frequently declared that they re-

quired no monopoly, that they considered themselves to be merely toll proprietors, and that it was neither their desire, nor for their interest, to undertake the conveyance of passengers and goods over the lines of road which they proposed to construct.

“The legislature, in its anxiety to prevent a monopoly which was not sought even by the promoters of the bills, enacted that any person might place and run his own engines, carriages, and waggons on a railway, subject to the payment of certain tolls, but under such regulations as might be made by the company. With the same view it was provided that the owners and occupiers of adjoining lands should have free access to the railway, and might make branch lines to join the company’s line, in which case the company should be bound to make an opening for the branch line, charging the cost of this work to the parties requiring the accommodation. Rights were also given to lords of manors and other owners of contiguous land to erect wharfs, and they were further empowered to use the railway as far as their own land extended, without being liable to any payment of toll, (a privilege obviously useless, except under the supposition that such land-owners need not apply to the company for locomotive power); while the beneficial use which they might make of railways, in the cheap conveyance of their produce to a distant market, and in bringing manure and materials for their lands and buildings, was frequently stated to be the chief inducement for allowing their property to be intersected, and their lands purchased.

“Parliament, in pursuance of the same erroneous view, considered that it had sufficiently provided for the interests of the public, when it had limited the amount of tolls, and enacted that these should be regularly published, by being affixed in conspicuous parts of the toll-houses; rates for the carriage of various articles, such as limestone, coal, manure, timber, corn, cotton, &c. were evidently limited with the same intention of guarding the public against an arbitrary charge. It is obvious that all these restrictions and limitations were use-

less, except under the supposition that there should be a free competition among the parties supplying the locomotive power."

In pursuance of the recommendation contained in this Report, a bill was brought in which passed into a law, and is now "an act for regulating railways," 3 & 4 Vict. c. 97, in which some salutary provisions are made. By s. 1 it is enacted, that after two months from the passing of the act (10th August 1840), no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given by the company to whom such railway shall belong, to the Board of Trade; and (s. 2) if any railway, or portion of a railway, shall be opened without notice, a penalty of 20*l.* for every day during which the same shall continue open, shall be incurred. By s. 5, the Board of Trade may appoint inspectors, who may enter and examine any railway, and the stations, works, and buildings, and the engines and carriages belonging thereto: and a penalty of 10*l.* is to be incurred for obstructing an inspection.

Besides this inspection, a further controul will be obtained by the provisions which enact that copies of all existing bye-laws of companies shall be laid before the Board of Trade, or are otherwise to be void (s. 7); and no future bye-laws shall be valid till two calendar months after they have been laid before the Board of Trade: and by s. 9, the Board of Trade may disallow any bye-law, and all provisions of railway acts requiring the confirmation of bye-laws by other authorities, are repealed (s. 10).

In order to enforce the observance of these regulations, the Board of Trade may direct prosecutions to be made under the act, (s. 11), which prosecutions shall be under the sanction of the Board of Trade, and within one year after the offence, (s. 12). The next clause is so important, that we shall give it entire.

"And be it enacted, that it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, guard, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works

thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises,) in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner."

On hearing the case, the justice of the peace is empowered to send the case to be tried by the quarter sessions, (s. 14).

Persons are also to be punished for obstructing railways, and may be imprisoned for the offence for any term not exceeding two years, (s. 15). Persons may also be punished for obstructing the officers of any railway, or trespassing upon any railway, before any justice of the peace, and shall forfeit any sum not exceeding 5*l.*, or be imprisoned for any term not exceeding two months, (s. 16).

We shall probably find room for the act itself hereafter, but we thought it right to bring its general scope under the immediate notice of our readers.

PRESUMPTION OF SURRENDER OF TERM.

It was a rule of Lord *Mansfield*, that he would never suffer a plaintiff in ejectment to be nonsuited by a term outstanding in his own trustees, but would in such cases direct the jury to presume the surrender of the term. *Lade v. Holford*, 3 Burr. 1416. Lord *Kenyon* expressed his approbation of this rule, but with this restriction, that al-

though the jury might presume the term surrendered, yet without such presumed surrender, the estate in the trustee must prevail. *Doe v. Staple*, 2 T. R. 696; *Doe v. Reade*, 8 T. R. 122; *Goodtitle v. Jones*, 7 T. R. 47. The difficulty of this rule is, that it has been the long-established practice of conveyancers to assign satisfied terms to trustees for the benefit of purchasers and mortgagees, as a protection against all intermediate charges and incumbrances between the creation of the term, and the purchase or mortgage; and this practice has been recognized and sanctioned by the most eminent Judges, as by Lord *Hardwicke*, 1 T. R. 768; and Lord *Eldon*, 6 Ves. 184.

The modern doctrine as to presuming the surrender of terms, has been frequently adverted to in these pages. It is, that when the inheritance is aliened or dealt with by the persons entitled to the term without assigning or taking notice of the term; this affords a ground for presuming it to have been surrendered. This rule was laid down in the well-known cases of *Doe d. Burdett v. Wright*, 2 B. & Ald. 710; and in *Doe v. Hilder*, 2 B. & Ald. 782, and has been followed in several cases, and carried even to a greater extent. Thus in the case of *Bartlett v. Downes*, 3 B. & C. 616, it was held that the granting of the office of a steward of a manor by the owner of the inheritance without the concurrence of the trustee of an attendant term, was a ground for presuming the surrender of the term.

However, in a very late case, the Court of Common Pleas would not presume the surrender of a mortgage term to the owner of the inheritance, in favour of a defendant in ejectment, from the circumstances that in 1802, the Court of Chancery had decreed a sale of the mortgaged property for the payment of the money borrowed, and that some sales had taken place under the decree, but the defendant had not purchased the land in question under the decree, and there was no evidence of any further proceedings in Chancery. *Doe d. Hammond v. Cooks*, 6 Bing. 174. And in the more recent case of *Doe v. Plowman*, 2 B. & Ad. 573; (and see *Day v. Williams*, 2 C. & J. 460), when the term had been assigned to attend in 1780 upon a purchase, and in 1808, the purchaser settled the property upon her marriage, and afterwards devised the property under a power in the settlement, but neither in the marriage settlement, nor of course in the will, was any mention made of the term, it was held upon an ejectment by the heir-at-law, that a surrender of the

term could not be presumed; and Lord *Tenterden* observed that the doctrine laid down in the case before mentioned had been much questioned, and he inquired whether such a term as this was usually noticed in a marriage settlement, and upon receiving an answer in the negative, observed, "if that be so, there is no ground for presuming that this term, which was assigned to attend the inheritance, was ever surrendered." We may, therefore, be justified, says Sir E. Sugden, 3 V. & P. 65, 10th edit., in considering the law to stand as it did before the decision in *Doe v. Hilder*, and conveyancers will follow the advice of Lord *Eldon*, and not depart from the practice which they have hitherto followed.

AMERICAN LAW.

[Continued from pp. 295, 6.]

1.—BOLIVIA.

BEFORE proceeding to details, it may be convenient to premise what are intended to be the common leading points of consideration in each of the different systems of American law. These are, 1. The sources or grounds of law. 2. Government. 3. Judicial system. 4. Private law, or civil regulations. 5. Aliens; and, 6. Treaties with Great Britain and other nations. And if we fail in furnishing information on all or any of these points, let it be attributed, not so much to the want of matter on the subject itself, as to the unavoidable limits of our researches, and the scantiness of materials of the proper sort to be found in England.

From all accounts it appears that Bolivia is at present in a very unsettled state. It is not yet clear whether she has actually revolted from the Peru-Bolivian Confederation, with which the British government has so recently entered into a treaty of amity, commerce, and navigation.* And although with respect to Great Britain, this particular republic must be considered as part of the confederation, unless she should be recognised by Great Britain as a separate independent state; yet, since she had her own legislature even before the revolution, it does not appear to us improper to consider her as a distinct country in relation to jurisprudence.

This republic, originally called Upper Peru, and once forming a portion of the Spanish vice-royalty of Buenos Ayres, or La

* Signed at Lima, 5th June, 1837.

Plata, dates from the battle of Ayacucho, which took place on the 9th of December, 1824, and in which the republicans under General Suere completely defeated the royalists. On the 11th of August, 1825, a constituent congress assembled at Chuquisaca, and declared it to be the national will, that Upper Peru should constitute a distinct and independent nation. And they afterwards gave it the name of Bolivia, in honor of General Bolivar. (Am. Almanac, 1839, p. 218.)

The sources of Bolivian law, and the order of precedence in reference to these different sources, may be stated to be as follows:—1. Acts of the Peru-Bolivian Confederation, prior to the revolution of Bolivia. 2. Acts of the legislature of the republic, and among these acts it is said that there is a general code of laws, entitled "*Codigo Santa Cruz*." This is evidently in imitation of the title of *Code Napoléon*; for Santa Cruz is the name of the general who was elected president of the republic in 1828; and under his presidency, the *Codigo* was published in 1837. 3. Decisions of the Bolivian courts. 4. The Spanish law. 5. The Roman civil law. And, 6. The ancient Peruvian law, or the customs and usages of the country.

Owing to the revolution before alluded to, it is scarcely possible to say what is the present form of government in Bolivia. The constitution, however, which was proposed by Bolivar, and adopted by the Congress in 1826, vested the executive power in a president chosen for life, with the privilege of naming his successor, and the legislative power in three bodies; a Senate, Tribune, and Censors. But this constitution was soon abolished. (Ency. Brit 7th edit. art. Bolivia; Am. Alm. 1839, p. 218).

According to this constitution, the judges were proposed by the people, and chosen by the legislature. No one could be arrested without previous information of the alleged fact of delinquency, unless when taken in a flagrant crime. All trials and judgments were public. In criminal cases, none could be imprisoned more than forty-eight hours without having presented to him the charges preferred against him, and being delivered over to the proper tribunal or judge. No demand for redress in civil or criminal cases could be brought judicially before the justices of peace, until they had first endeavoured to promote reconciliation, by hearing the representations of the parties, explaining to them their respective rights, and proposing some means of accommodation. (Ency.

Brit. Bolivia, in which a farther account of the constitution may be found).

The exercise of religion was freed from all restraints. Slavery in every form was abolished. No profession, trade, or employment could be prohibited, unless repugnant to public feelings, or injurious to the health and security of the community.

With respect to aliens, and particularly Englishmen in Bolivia, and, by way of reciprocity, Bolivians in England, it may suffice to extract one or two points from the Peru-Bolivian treaty with Great Britain in the year 1837.

The citizens and subjects of the contracting parties in the territories of each other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the countries respectively, for the prosecution of their just rights, and they shall be at liberty to employ, in all cases, the advocates, attorneys, or agents of whatever description, whom they may think proper, and they shall enjoy in this respect the same rights and privileges therein as native citizens. (Treaty, Art. 8.)

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of merchandize, goods, and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination by sale, donation, exchange, or testament, or in any other manner whatsoever, as also the administration of justice, the subjects and citizens of the two contracting parties shall enjoy in their respective dominions and territories the same privileges, liberties, and rights as native subjects; and shall not be charged in any of these respects with any higher imposts, or duties, than those which are paid by the native subjects or citizens of the Power in whose dominions or territories they may be resident; subject, of course, to the local laws and regulations of such dominions or territories. In the event of any subject or citizen of either of the two contracting parties, dying without will or testament in the dominions or territories of the contracting parties, the Consul General or Consul of the nation, or, in his absence, his representative, shall have the right to nominate curators, to take charge of the property of the deceased, so far as the laws of each country will permit, for the benefit of his lawful heirs and creditors, without interference, giving convenient notice thereof to the authorities of the country. (Treaty, Art. 9.)

CHANGES IN THE LAW

IN THE LAST SESSION OF PARLIAMENT.

No. XII.

INCLOSURES.

3 & 4 Vict. c. 31.

An act to extend the powers and provisions of the several acts relating to the inclosure of open and arable fields in England and Wales. [23d July 1840.]

1. 41 G. 3, c. 109. 6 & 7 W. 4, c. 115.

The award to be conclusive evidence that the provisions of the act have been complied with and the necessary consents given. Parties taking possession of or proceeding to inclose or to cultivate their allotments to be deemed to have waived all right of appeal.—Whereas an act was passed in the forty-first year of the reign of his late Majesty King George the Third, intituled “An act for consolidating in one act certain provisions usually inserted in acts of inclosure, and for facilitating the mode of proving the several facts usually required on the passing of such acts:” and whereas another act of parliament was passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled “An act for facilitating the Inclosure of Open and Arable Fields in England and Wales:” and whereas it is desirable that awards under the said secondly recited act should be rendered final and conclusive, and that the powers of the commissioners acting under or in execution of the said recited acts or either of them, for the ascertaining and determining boundaries, should be extended in the respects hereinafter mentioned; Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the lord’s spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that (subject and without prejudice to the right of appeal given by the said secondly recited act,) all awards that shall be made in pursuance of that act and of this act, or either of them, shall immediately after the execution thereof be conclusive evidence that the provisions of the said acts have in all respects been complied with, and that all necessary consents have been given; and no other evidence than such awards shall be requisite to establish the title under the inclosure of the parties concerned or interested in the same: provided always, that if any party concerned or interested in any such inclosure shall, after the making of the award, thereunder take possession of, or proceed to inclose or to cultivate, any allotment, or any lands given in exchange which shall have been thereby awarded to such party, all right of appeal which might otherwise have been exercised by such party against the said award shall from the time of such taking possession, or of such proceeding to inclose or to cultivate, (as the case may be,) be deemed and taken to have been absolutely waived and surrendered.

2. Powers of commissioners as to setting out

boundaries extended.—“And whereas by the said first recited act power is given to the commissioner or commissioners appointed in or by virtue of any act of inclosure to ascertain and determine the boundaries of parishes, manors, hamlets, or districts to be divided and enclosed, and of parishes, manors, hamlets, or districts adjoining thereto: and whereas it is expedient that the power of such commissioner or commissioners should extend to the straightening of boundaries in cases in which the lands in any parishes, manors, hamlets or districts so to be divided and inclosed are or are reputed to be intermixed with the lands of any adjoining parish, manor, hamlet, or districts;” Be it enacted, that so much of the powers and provisions in the said first recited act contained as relates to the ascertaining, setting out, determining, and fixing the boundaries of parishes, manors, hamlets, or districts shall extend and be applicable to the straightening of the boundaries of any parish, manor, hamlet, or district to be divided and inclosed under the said recited acts or either of them, whenever the lands of such parish, manor, hamlet, or district shall be or be reputed to be intermixed with the lands of any other parish, manor, hamlet, or district.

3. *Commissioners to declare by their award the parish to which any land cut off in straightening boundaries shall be annexed.*—And be it enacted, that in every case in which the commissioners shall, in the exercise of the powers given to them by the said recited acts or by this act, for the purpose of ascertaining or straightening boundaries, sever any land from any parish, manor, hamlet, or district to which it may have been reputed to belong, they shall in and by their award declare to what parish, manor, hamlet, or district, such land shall be annexed; and the same shall thenceforth, for all purposes, belong to the parish, manor, hamlet, or district to which it shall have been so declared to be annexed as aforesaid.

4. *Powers of 6 & 7 W. 4, c. 115, extended to lands commonable only during part of the year.*—“And whereas by the said secondly above recited act it was enacted, that it should be lawful for two third parts in number and value who should be interested in manner therein mentioned in any open and common arable fields, including any untitled slips or balks therein, or any open and common meadow or pasture lands or fields in any parish, township, or place (except as therein excepted) in England and Wales, known by metes and bounds, or occupied according to known and legal rights, to inclose in manner therein mentioned such said lands and fields: and whereas doubts have arisen whether the said secondly above recited act applies to and includes such open and common arable fields as have adjacent thereto (but not separated by any fence therefrom) certain tracts of grass land commonable during part of the year, and holden in severalty, or by lot or apportionment, by or among persons interested therein, during other parts of the year;” be it therefore enacted, that the said secondly above recited act, and

all powers and provisos therein contained or mentioned, shall be adjudged and construed to apply and extend to all such open and common fields and tracts of grass land as are herein last before mentioned.

5. *This act to be construed with that of 6 & 7 W. 4.*—And be it enacted, that this act shall be construed as one with the said secondly above recited act.

6. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

BEFORE proceeding with the other Acts relating to the Law, we shall continue the List given at p. 310—313, *ante*, of all the Public Statutes of the last Session :

3 & 4 VICT.

CAP. 32.—An Act to continue for one year and from thence until the end of the then next Session of Parliament the several Acts relating to the Importation and Keeping of Arms and Gunpowder in Ireland.

[23d July 1340.]

CAP. 33.—An Act to make certain provisions and regulations in respect to the exercise within England and Ireland of their office, by the Bishops and Clergy of the Protestant Episcopal Church in Scotland, and also to extend such provisions and regulations to the Bishops and Clergy of the Protestant Episcopal Church in the United States of America; and also to make further regulations in respect to Bishops and Clergy other than those of the United Church of England and Ireland.

[23d July 1340.]

No. XIII.

MASTERS IN CHANCERY.

CAP. 34.—*An Act for making Provision as to the Office of Master in Chancery in certain Cases.*

[23d July 1840.]

46 G. 3, c. 128. *Lord Chancellor may grant annuities to Masters in Chancery unable to perform the duties of their office.*—Whereas by the act passed in the forty-sixth year of the reign of his Majesty King George the Third, intituled “An Act for making Provision for such Masters in Ordinary of the High Court of Chancery as from Age or Infirmary shall be desirous of resigning their Offices with the Approbation of the said Court, and for augmenting the Income of the Masters in Ordinary of the said Court,” no provision is made for the payment of any annuity or retiring pension to such of the Masters in Ordinary of the High Court of Chancery as, being disabled by any permanent infirmity from the due execution of their offices, may by reason of such infirmity be incompetent duly to resign the same, and it is expedient to provide for such cases: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual

and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Lord High Chancellor of Great Britain, or the Lord Keeper or Lords Commissioners for the custody of the Great Seal of Great Britain, by any order or orders of the High Court of Chancery, to be made from time to time on a petition presented to him or them for that purpose, to order, if he or they shall so think fit, an annuity or clear yearly sum of money not exceeding the sum of one thousand five hundred pounds to be paid to such person or persons as he or they shall in any such order in that behalf name, out of the interest and dividends of the government or parliamentary securities which may at any time be standing in the name of the Accountant General of the High Court of Chancery to an account intituled “Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery,” and out of the interest and dividends of the government or parliamentary securities which may at any time be standing in the name of the said Accountant General, to an account intituled “Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery,” or either of them, for the use and benefit of any Master in Ordinary of the High Court of Chancery who shall be afflicted with any permanent infirmity disabling him from the due execution of his office, and who shall also by reason of such infirmity be incompetent duly to resign the same; and in such order or orders the cause or ground of making the same shall be distinctly specified; and the annuity or clear yearly sum of money mentioned in such order or orders shall be paid by the Governor and Company of the Bank of England, out of the interest and dividends aforesaid, (but subject and without prejudice to the payment of all salaries and other sums of money by the several acts of parliament in the said recited act referred to directed or authorized to be paid thereout,) by even and equal payments, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October, in every year, during the life of such Master in Ordinary, to the person or persons in such order or orders in that behalf named; the first of such quarterly payments, or a proportionate part thereof, to be calculated from the date of such order, to be payable on the first of such days which shall occur after the date of such order, and such annuity or yearly sum shall be free from all parliamentary taxes; and the office of such Master in Ordinary, for whose use and benefit any such annuity or retiring pension shall have been so ordered to be paid, shall from and after the date of such order be and be deemed to be thereby voided and vacant, as well and in the same manner as if such Master had duly resigned the same; and the person or persons to whom such annuity as aforesaid shall, by virtue of any such order as

aforesaid made under the authority of this act, be payable, shall be entitled to receive and shall be paid, in the place of such Master as aforesaid, and in like manner as he would if not incapacitated as aforesaid have been paid the same, and for his use and benefit, such proportionate part or parts of any salary and compensation to such Master as may or shall have accrued from the time when the last payment of the same respectively was made to such Master to the day of the date of the order for such annuity as aforesaid.

2. *Annuity not to be granted except upon production of medical certificate.*—Provided always, and be it enacted, that no such order shall be made, unless the Lord High Chancellor, Lord Keeper or Lords Commissioners aforesaid, shall have previously received certificates in writing, according to the form in the schedule to this act annexed, signed by three several medical persons (physicians or surgeons), who shall have been named and appointed by the Lord High Chancellor, Lord Keeper or Lords Commissioners, in that behalf, and each of whom shall have separately visited and examined such Master on two several days at the least.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of certificate.

I do hereby certify, that I did on the day of and the day of in the year personally visit and examine one of the Masters of the High Court of Chancery: and I further certify, that the said is afflicted with [*state fully the nature of the affection or complaint.*] and that he is thereby permanently disabled from discharging the duties of his office as such master, and that he is also by reason thereof incompetent duly to resign the same.

This day of A. B.

[Physician or surgeon.]

CAP. 35.—An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada. [23d July 1840.]

CAP. 36.—An Act for preventing ships clearing out from a British North American port, loading any part of their cargo of timber upon deck. [23d July 1840.]

CAP. 37.—An Act to consolidate and amend the laws for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for providing for the observance of discipline in the Indian navy, and to amend the laws for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in service. [4th August 1840.]

Sec. 48.—Provides that persons employed under the articles of war to collect the effects of officers and soldiers dying in service abroad, may do so without probate or letters of administration.

Sec. 49.—Defines what debts shall be deemed regimental debts, and to have priority; such as money due for clothing, equipments, wages, household expenses, mess or regimental dues, sums to agent or paymaster, funeral expences, &c.

Sec. 50.—Such debts to be paid without probate or letters of administration, and the surplus to be deemed the personal estate of the deceased; and, if not exceeding 500 rupees, to be administered by the military secretary without probate or administration.

CAP. 38.—An Act to continue compositions for assessed taxes until the 5th April 1842. [4th August, 1840.]

No. XIV.

TURNPIKE TRUSTS.

CAP. 39.—An Act to authorize Trustees or Commissioners of Turnpike Roads to appoint Meetings for executing their Trusts in certain cases. [4th August, 1840.]

3 G. 4, c. 126, s. 70. *Repeal of recited Provisions of Act, 3 G. 4, c. 126.*—Whereas an Act was passed in the third year of the reign of his late Majesty King George the Fourth, intituled an Act to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England, whereby it was enacted, that where a sufficient number of the trustees or commissioners of any turnpike road should not meet on the day appointed by any act or acts of parliament, for making, repairing, or maintaining any turnpike road for their first meeting, or should not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of such act or acts might be frustrated, in all or either of the said cases it should be lawful for so many of the said trustees or commissioners as should meet, or the major part of them, or, in case no such trustee or commissioner should be present, for their clerk or clerks, to cause notice in writing to be affixed on all the turnpike gates which should be then erected on the said respective roads, or if no turnpike gate should then be erected, to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired should lie, and also in some public newspaper circulated in the county in which the road should be situate, at least ten days before the intended meeting, appointing such trustees or commissioners to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners, if no such preceeding meeting should have been held; and the said trustees or commissioners when met in pursuance of such notice, should and might and they were thereby required to proceed and carry such act or acts into execution, in the same and in as ample and full a manner to all intents and purposes as they

might or could have done if no such neglect had happened: And whereas the said recited provisions have been found inadequate to the purposes intended to be provided for, and it is expedient that more ample provision should be made: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said recited provisions shall be and the same are hereby repealed.

2.—*Providing for cases where sufficient number of trustees do not attend on the day appointed for the first meeting of trustees under any act relating to turnpike roads.*—And be it enacted, that where a sufficient number of the trustees or commissioners of any turnpike road shall not meet on the day appointed by any such act or acts respectively for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of the said act or acts may be frustrated, in all or either of the said cases it shall be lawful for so many of the said trustees or commissioners as shall meet, or the major part of them, or in case no such trustee or commissioner shall be present, for their clerk or clerks, or in case of the death, resignation, absence, incapacity, neglect, or refusal of such clerk or clerks, for any five or more of such trustees or commissioners to cause notice in writing to be affixed on all the turnpike gates which shall be then erected on the said respective roads, or if no turnpike gate shall then be erected, to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie, and also in some public newspaper circulated in the county in which the road shall be situate, at least ten days before the intended meeting, appointing such trustees or commissioners to meet at the place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners if no such preceding meeting shall have been held; and the said trustees or commissioners, when met in pursuance of such notice, shall and may, and they are hereby required to proceed and carry such act or acts into execution in the same and in as ample and full a manner to all intents and purposes as they might or could have done if no such neglect had happened.

2.—*Act may be amended this Session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

CAP. 40.—An Act to amend two Acts of his late Majesty King William the Fourth, for the Relief of certain of her Majesty's Colonies and Plantations in the West Indies.

[4th August 1840.]

CAP. 41.—An Act to authorize the Commis-

sioners of her Majesty's Treasury to grant the lease of the Caledonian Canal for a term of years, and to regulate the future management thereof.

[4th August 1840.]

[To be continued.]

DECISIONS IN A COURT OF CONSCIENCE.

LAW OF LANDLORD AND TENANT.

THE following cases are taken from Hutton's "Court of Requests," a work published in 1787, and lately reprinted by W. & R. Chambers. The worthy commissioner uses the term "equity," in a sense not recognized in the Court of Chancery; but his views of common sense and justice, the interests of trade, and the convenience of the public, seem to be sound and proper.

"It is entertaining to contemplate the gradation of things; to behold a first cause of no moment produce a second, that second produce a good, that good an evil, and that evil a remedy: every link in the chain of events draws forward and terminates in the next.

The manufactures of Birmingham require an amazing number of people to conduct them, and though their wages are from ten shillings a week to two guineas, yet they are as poor as the common labourer who earns but eight. Imprudence is the characteristic of this class. The few that are otherwise soon become masters, and rise to fortune. This prodigious number of the lower ranks requires a proportionate number of small houses for their accommodation. With these we abound. The landlords can readily let their houses, but they loudly complain that their rents are ill paid. The man who melts down his weekly income, has but little left besides promises for his landlord. A distress cannot be taken; the effects would not pay the charge. Riches are said to give power; but here the case is reversed, for the poverty of the tenant is his security, and gives him a power over the landlord. Of all the men we contend with, he is the hardest to conquer who has nothing to lose. The laws of England point out but one way to recover the landlord's premises, by ejectment, and this he dares not pursue; the whole expense would fall upon himself, besides having the wretched chance of placing them in the hands of another of the same stamp. After he has experienced evil upon evil without a cure, he flies for relief to the court of requests. In this court, if properly authorized, a man might find that universal nostrum for his property which is vainly held forth by the faculty for his health.

Court. What is your demand?

Landlord. As much as the court can allow. He is my tenant, and will neither pay rent, nor quit the place. I would forgive the debt if he would grant possession.

C. Why do not you pay the rent?

Tenant. I have no money.

C. Why do not you quit the house?

T. I cannot get another.

C. By not paying the rent, you act against yourself. No landlord will let you a house that knows it. Can a man lay out his money in purchase, submit to repairs, discharge parliamentary taxes, and have no returns? We live by one another, and it is requisite we should; but we are not to live upon another. If you will quit the premises directly you shall have your own time to discharge the debt; if not, we will make an order for immediate payment, in which case you will instantly be committed to prison.

T. Give me one week, and I will quit.

C. You shall have it. There are (to the landlord) three ways before us: if you can take your tenant's word, we can make an order in small payment, which will favour him; if not we can continue the cause a week, for sixpence, to see if he fulfils his promise; or we can make an immediate order for the whole—but in this last case you must give your promise that you will not hurt him if he perform his.

L. I will take his word.

Double Rent.

It requires a tolerable capacity even to ravel a cause in law, but very small abilities will decide it in equity. Law is at best but a crooked path, and a man of talents can easily make it more crooked; but it is the province of equity to make straight. Knotty points are difficult to determine. A man quickly finds himself in a labyrinth, and the farther he penetrates the more he is bewildered: but equity has this advantage—she can generally solve her own questions.

"It will be granted that every man has a right to command his own property, otherwise it cannot be called his. If another holds a share in that property, each ought to command according to his share; neither of them can trespass on the other. Should the property be a freehold estate, the controul is solely in himself, but if he grants possession, whether by lease or otherwise, he admits another into a share of that controul. The bounds of power in each are ascertained by the covenants; when these expire, the whole power reverts to its owner.

"Taylor, a gay young fellow, rented a workshop of Edmunds, an industrious young widow. She wanting the shop, desired him to quit, which he refusing, she sent him a written order to leave the premises in three months, or pay double rent. This order being disregarded, she brought him to the court.

"He alleged "as he had fairly taken the premises, he had a right to keep them; and as they had both agreed for simple rent, it could not be altered without him." It was replied, that she having full power over the shop, had granted a participation of that power by admitting him tenant at will. Had he possessed a lease, he might have enjoyed all its privileges during the term, but being

only a temporary tenant, he could possess only a temporary privilege. He could not possess more than was granted, otherwise he would hold the property of another, and she lose the authority of an owner. The court asked their clerk whether a landlord could legally charge double rent, who assured them that an act for that purpose existed, and its intent was to prevent the dreadful expense of ejectments. The court then remarked, that as legal notice had been fairly proved, and as possession ought to have been delivered up at the end of that notice, they should make an order for the rent demanded.

"The tenant and his attorney became violent. 'The premises should never be delivered up; they were suitable; the decision was unjust; and a remedy would be found in law.' But I have long observed, he who, threatens to do most, does nothing. The tenant asked the court whether he could continue possession under the double rent awarded?

"Court. It is not our province to solve doubtful points of law; we leave them to the long robe; but we apprehend she may, after legal notice, still double her demands. If you reflect a moment, you fall by your own argument—"you will not part with the shop, because it is useful;" you forget the same reason operates with her, but with double force, because she has a right, and you have not. Should the cause come again before us, you may expect the harshest sentence ever awarded by this court; for we deem it a fundamental maxim, if one man holds the property of another against his consent, has power to restore it, and will not, he ought to be punished till he will.

Occupation.—"Two men may be friendly in making a bargain, both have upright intentions, carry that bargain to the very conclusion, but when one comes to close with the other, instead of paying in cash, may pay in subterfuge.

"A person held some land, who was solicited by a gardener to let him a small part for potatoes. They agreed that the gardener should have as much as he used, at the rate of 5*l.* per acre. A plot of ground was fixed upon, staked out, and measured.

"The gardener, whether for want of setts, or for what other reason did not appear, occupied only a part of the plot; the other lay waste, without bringing a profit to either.

"The proprietor demanded rent for the land laid out; the gardener insisted on his right to pay for no more than he used, according to agreement.

"Court. Your bargain divides itself into two parts: by the first, you were to pay for what you used. But afterwards, a certain portion is staked out, and agreed to be appropriated to your use. Here the first bargain ceases, or rather, is included in the second. After the land was marked out, it was yours; he had no right to take it from you, and if you did not use it, the fault was your own; your taking it prevented his using it. If you take a house, you must pay rent whether you occupy it or not.

Notice to Quit.

"Common usage among men, and the practice of the courts of law, vary with time. What was stedfastly retained, is now kicked out of court as a troublesome guest. The laws of a country should equally favour every class of men; but formerly the tenant had much the advantage of the landlord, who could not discharge him from his premises without regular notice, while the tenant could any quarter day deliver up the key with his rent at a moment's warning. It was alleged, in favour of this unequal practice, that the tenant, whose bread depended upon possession, might by the caprice of a landlord be instantly turned into the street, and lose his subsistence. But they forgot that the same argument holds good with the landlord. If the tenant is allowed to quit instantly, how can the landlord provide himself with another? How must he be supported, if his independence, which is often the case, lies upon the rent? Or how can he pay for repairs, and discharge the taxes? Modern practice, however, to its honour, has placed them on a level; neither of them can separate without reasonable notice: it follows, what is reasonable notice?

"A landlord sued a tenant for a quarter's rent, due at Midsummer. The tenant denied the debt, for he had paid and quitted at Lady-day. The clerk of the court observed, that no tenant could quit, except at that quarter day on which he entered. That if he took premises at Midsummer, or any other day, he became tenant for one year, and when that expired, and he entered upon another, he was bound to the end of that also, and continued bound as tenant for a year, during every year of occupation, and whenever he quitted must give prior notice; that this was the modern practice of the courts above, under the Lords Mansfield and Loughborough, and ratified the argument with a quotation from Blackstone; that if the tenant before us entered at Lady-day, the landlord is entitled to a whole year's rent, instead of a quarter's. The commissioners perused the quotation, and though the bench and clerks generally agree in sentiment they did not exactly see the case in the same light. They thought it was not perfectly in point. A commentary may require a commentary. The word *tenure* is copious, and divides itself into too many branches to be explained in a short compass; neither did the passage express whether a whole year's warning was requisite or only a part. Law and equity, which should ever be the same, often vary. If the commissioners cannot decide against law, they can decide without it. Their oath binds them to proceed according to *good-conscience*. Common justice is understood by an ordinary capacity; it seldom requires a commentary. A man only needs information to be able to decide. Though the bench pays the utmost deference to the judgment of the great names above, yet they are not to give up their own. There is no occasion for either common or statute law to prevent injustice, where no injustice is

incurred. One quarter day is equal to another in letting a house, particularly of the smaller size; therefore, if sufficient notice is given, neither can suffer. Lord Mansfield, then, could not have his eye on this kind of tenure, when he determined in favour of a year. To suppose a house saddled upon a tenant, who takes and pays by the week, is to suppose an absurdity beneath Lord Mansfield. If a man takes a farm at Ladyday, he must hold it one whole year after another, for if he is allowed to quit at Michaelmas when he has taken off the crop, the landlord would suffer; and this, I make no doubt, is the tenure their lordships meant, when they would not suffer the year to be divided. But it is not yet determined what is reasonable warning—that warning which should equally bind both, where no particular bargain is made. As I have never seen a judgment upon this head in any of our law books, and as books of equity do not exist, I shall venture my own.

"The length of time in which a landlord and tenant agree for paying rent, seems to be the proper length of time for warning, whether it be half-yearly, quarterly, monthly, or weekly, except in a farm, and then the tenant, like the *anno domini*, must wind round the year. To suppose him who pays half-yearly to give a week's notice, and him who pays by the week half a year's, is to suppose a double absurdity.

Court (to the landlord). Did you make any advantage of the house during the quarter for which you sue?

Landlord. No.

C. If you had, we should have deducted it.

Second Example, or the Case reversed.—We endeavour to force our base bargains and our base money to pass, although they are not marked with the stamp of justice. How few arrive at that exalted pitch in the scale of excellence, as to see their antagonist's side of the question as well as their own; and yet, among my small number of friends I could enumerate twice as many of this description as were found in the whole Spanish army that went against Mexico, in the crowded city of Sodom, or in the American congress. Finished characters like these will probably pass through the world without dispute. They have no antagonist.

"Nothing is more difficult in the narrow road of life, than for a man to prevail with himself to give up a false argument; he considers it a disgrace; but if he can accomplish it, nothing is more to his honour. *G., L., and B.* may be said to argue to the end of time, and, pardon an Irishism, still argue. They are winners from the first onset, for none but those who are obliged will enter the lists against them. When their faces are seen in the court, the result is known. They sometimes endeavour to bully, but usually to tease the bench into compliance. Like Fabius and Washington, they win by delay. But let the commissioner shut his eyes against fallacious and wire-drawn arguments, turn within, and examine his own ideas of right and wrong.

"It may seem a paradox, but the only way to fulfill some contracts is to break them.

"By a written agreement it appeared that *G.* had set a house to a tenant for two shillings and twopence a week, that each party was to give or take a quarter's warning; but the tenant quitting without notice, *G.* sued him for thirteen weeks' rent.

"The court inquired whether *G.* had made any advantage of the house during the quarter in dispute, when it appeared he had received two-thirds of the rent from a subsequent tenant; but he insisted, with great warmth, that he had a right to his bargain, that no power ought to break it, that this extra profit arose from his own management, for which he ought to be paid, and that a denial of his demand would be great injustice, for there would be an end of contracts.

"*Court.* You have learnt much, but there is one lesson yet to learn—to give up the ground that is not tenable. There may be honour in retreat as well as in victory. You have a right to your bargain and your rent; the bench will deprive you of neither, but you have no right to more. The very act of the tenant in delivering the key, is an argument that something was expected to be made of the house. Double rent was not mentioned, is no part of the contract, nor can it be justified. It is not material whether you or he let the house. He was your tenant to the end of the quarter; he alone was subject to profit and loss. The person you placed in the house must be considered as his under-tenant, and the money you received from him must be your tenant's property, which we shall deduct from the present claim, and leave you to chew a bitter cud you wish not to taste—that this court does not consult the interest of one of its suitors, but both.

Third Example.—"The parties interested in a cause are the most forward to decide upon it, but are, of all others, the least able. He is the best judge who takes neither side, but keeps equity in view, as the mark to which he steers.

"Edward Moore, an inhabitant of Deritend sued the overseer of Aston for the rent of a house occupied by a pauper. The overseer heavily complained against the demand. "If he was obliged to pay the money, he must pay it out of his own pocket; for the parish, at a public meeting, had ordered that no rent should be paid for paupers."

"*Court.* Did the overseers ever engage to pay rent.

"*Overseer.* Yes.

"*C.* Did they give notice to the landlord that they would desist?

"*O.* No.

"*C.* While the pauper was tenant, the parish was no way responsible; but when they agreed to pay rent, the overseer for the time being immediately became tenant, therefore subject to all the laws of tenancy. You may quit like other tenants, but it must be after reasonable warning, otherwise the landlord becomes a sufferer."

ORIGIN OF KING'S COUNSEL.

THE following account of the origin of the rank of King's counsel, is taken from Mr. Serjeant Manning's appendix to his *Serviens ad Legem*, or "Serjeants' case."

"23 Car. II. Edward Turner, Esq. Aurat., Speaker and Solicitor General, *ad statum et gradum*, &c., 19 Maii, seems to have been the first king's counsel (*a consiliis in lege peritus domini regi constitutus*,—*solicitor regis generalis* 11 Maii.) succeeded by Francis North, 20 May, in his office of solicitor general, and made chief baron the same term."—*Dugd. Chronica*, Series, 117.

Mr. Wynne (Tracts, 298) subjoins the following note:

"That point to me, I own, but with great submission, seems rather doubtful. Sir Edward Turner stands undoubtedly first in Dugdale's list, and it seems to be the first entry of the kind that occurs; but this entry cannot possibly decide the priority, as to the species of preferment, between Sir Edward Turner and Sir Francis North: because it only shews when they were made serjeants, not when either of them was king's counsel. On the other hand, my reasons for thinking Mr. North was the first of this order (which, as a regular order, began about this time) are these: the particular description of his brother, who wrote his life, the manner in which this preference was received by the benchers of the Middle Temple, and the resentment the Court of King's Bench expressed at the benchers' refusal to acknowledge his precedence, by making it a kind of 'dumb day' with them (as his Lordship afterwards made in his own court on another occasion;) all plainly prove, with the silence of the books before this time, that this was the time that gave birth to the order, and that he was the first of that order. The occasion of this preferment (from the writer of his life, p. 39,) was 'Mr. North's arguing at the Lords' bar the cause of Mr. Hollis, on a writ of error, at the intercession of the attorney general, who at that time of day, being an assistant of the House of Lords, could not argue there.' (See Lord Clarendon's History, b. 3, l vol. 166.) Mr. North argued on behalf of the crown; and although, says the writer, 'the Commons carried the cause, he was thereupon made of the King's council, which gave him the privilege of pre-audience, and coming within the bar. This action, and its consequence, had the effect of a trumpet to his fame; for the king had no council then, except serjeants, *ibid.* 37.' So far the writer; and it seems, wherever in old law books we meet with King's council, by that name are to be understood, either the privy council, the judges, or his serjeants; sometimes the parliament itself. 3 Inst. 125, and 1 Inst. 164. And so the stat. of Henry VIII., of residence. But scarcely any council in law, of the kind now particularly distinguished by that name. Lord Bacon indeed, as we find from those valu-

able letters lately published by Dr. Birch, informs us, as the first step of his preferment, 'he was made the king's counsel extraordinary;' but then he adds, 'it was without patent or fee, a kind of *individuum vagum*.' Letters, p. 256; so that Sir Francis North's was probably the first regular appointment."

SELECTIONS FROM CORRESPONDENCE.

JURISDICTION OF JUSTICE OF THE PEACE.

THE question proposed by "A Subscriber" in the number of the Legal Observer of August 15th, as to the power of a justice of the peace acting for a county at large, to act as such at his residence in a borough thereto adjoining, but which is locally situate in another county, is not without difficulty, and seems partly to depend on circumstances not entirely disclosed. If the borough in which such justice resides be a county of itself, or have exclusive jurisdiction under the provisions of 5 & 6 W. 4, c. 76, then I apprehend under the stat. 1 & 2 Geo. 4, c. 63, explaining and amending 28 Geo. 3, c. 49, he might legally act within such borough for the adjoining county, of which he was a magistrate, but not so if the borough were one not having a separate Court of Quarter Sessions, and consequently in which the magistrates of that county in which it is locally situate had concurrent jurisdiction. If the 1 & 2 Geo. 4 did not confer such power, I apprehend it conferred nothing; because, if the city or exclusive jurisdiction there spoken of, was within the same county, and was not a county of itself, there could be little question, independent of such last-named statute, that the county justice could act as such at his residence in the city or borough. I may also add, that, under the two last-named statutes, it is immaterial that the place at which such county justice acts (within such city or borough) should be his residence.

G. H. L.

MORTGAGE STAMPS.

A. mortgaged his property for 1000*l.*, and the same was transferred, and an additional sum of 1000*l.* advanced. The stamp on the further advance is 5*l.*, and the five subsequent skins are 1*l.* stamps. The property has been lately sold, and the purchaser's solicitor refuses to complete unless the deed is re-stamped. Is the progressive duty on the transfer and further advance sufficient, or must the stamps be 1*l.* 5*s.* 0*d.*?

A COUNTRY SOLICITOR

CREDITOR'S SUIT.

A. DIED indebted to B., leaving a will and sufficient assets. A bill was filed and debts paid under a decree. The suit is now at an end, and B. is still unpaid, he having no knowledge of the existence of the suit. Is B. barred? and if he has a remedy, what course should he pursue?

B.

SUPERIOR COURTS.

Rolls Court.

EQUITABLE MORTGAGE.—ACCOUNT.—PARTIES.

Where questions arise as to the rights of equitable mortgagees, and their claims are disputed by the assignees under a commission of bankruptcy issued against the parties who deposited the deeds, the Court will not, as of course, appoint a receiver on motion, and will not make any order until all parties interested in the mortgaged property are before the Court.

In 1829, Messrs Hindes and Derhams entered into partnership as worsted spinners at Dolphinholme, Lancaster, and at Leeds, and in 1832, being in want of money, they applied to the Lancaster Bank Company, with whom they had previously opened an account, to make them an advance, which the company agreed to do upon having the deeds of certain freehold premises belonging to the firm, but which had been conveyed to William Hinde in trust for the partnership, deposited as security. This was accordingly done, and a memorandum was drawn up, the terms of which were, that the deeds were deposited for securing the advances then made, and all further advances which might be made by the Banking Company on account of the firm, and that a legal mortgage should be executed of the property comprised in the deeds whenever the company might require it.

In 1833, a further advance was made upon similar terms, and thereupon deeds relating to other freehold property, and also to certain leasehold property, were deposited by Messrs. Hindes and Derham, and a memorandum given to the effect before stated. In 1834, William Hinde died, having by his will given all the property comprised in the several deeds deposited to his son Thomas Foster Hinde, and directed that the business of the firm should be carried on for the benefit of his wife and family, until his son should attain twenty-one, when he was to be admitted a partner. The business was carried on by the surviving partners, pursuant to the directions contained in William Hinde's will, until 1836, when the son having attained twenty-one, was admitted a partner.

Various advances were subsequently made by the company to the continuing firm, and a third memorandum of deposit was given of deeds relating to other freehold property. The dealings with the company continued until December 1839, when a fiat in bankruptcy having issued against the then partners of the firm of Hindes and Derhams, a question arose between the assignees under the fiat and the Banking Company as to the extent of the deposits, the assignees contending that they ought to be confined to the sums advanced at the time they were given, and that credit ought to be allowed for the repayments since made, while the company insisted that all the deeds were deposited to secure any balance which might at any time be found due from the old

and the continuing firm, and a motion was now made for a receiver of the rents of the mortgaged premises, and for an injunction to restrain the assignees from selling any of the fixtures attached to such premises, and included, as was contended by the Banking Company, in their securities.

Tinney, Pemberton, and K. Parker, for the banking company.—It is contended by the parties who resist the motion, that the lien given to the banking company was confined to the advances made, or to be made, to the firm in existence at the time the memoranda of deposit were given, and that as one of the partners died, the firm became altered, and the liens could not be held to extend to advances made subsequent to his death. All the circumstances, however, proved that such a construction of the memoranda was not consistent with the facts. By the articles of partnership the partnership was to continue till 1845 absolutely, under the style of "Hindes and Derham," and it was provided that the death of one, or even of two partners, should not dissolve the partnership, but that the business should be continued so long as two partners remained. It was also provided, that in case William Hinde should die leaving a son or sons, he should be at liberty to appoint one or more of his sons in his place, but the management was to remain in the surviving partners till the sons attained twenty-one; and in the event of his not nominating his son or sons, the surviving partners were to purchase his interest, giving security for the amount and making provision for his widow, but no part of the capital was to be drawn out till after the expiration of six years from the time of his death. The whole of the partnership effects, therefore, at his decease became the property of the surviving partners, the firm remaining the same. After William Hinde's death, the surviving acting partners requested the account to be continued; and in April, 1837, the agreement was acted upon in the spirit contended for by the banking company. Part of the securities deposited consisted of a lease from the Duke of Hamilton, and as the Duke was only tenant for life, a bond of indemnity was given by him to secure the firm against loss in the event of the Duke's successors refusing to confirm the lease. The Duke having died and the lease being disputed, it became necessary to take proceedings on the bond, and the surviving partners applied to the banking company for the loan of the bond for the purpose of taking proceedings upon it, and on the 16th of April, 1836, the bond was forwarded to the then firm, and a letter written by the manager of the company, stating that it was lent upon the understanding, that whatever monies might be recovered upon it, should be applied in liquidation of the advances made by them, and for securing which the lease and bond had been deposited. Proceedings were afterwards taken and a sum of money was recovered, which was actually so applied. The slightest evidence of intention was sufficient to extend the lien to subsequent advances. *Ex parte Langston*, 17 Ves. 227; *Ex parte*

Kensington, 2 Ves. & B. 79. Robert Derham, the acting partner, and one of the executors and trustees of William Hinde, and who was perfectly competent to extend the lien, had said that if the account were allowed to continue, the securities should remain for all subsequent advances. With regard to the fixtures, it was proper to have an account taken and the produce secured; there were fixtures both in the freeholds and in the leaseholds.

Kindersley, for Robert Derham, the acting executor of William Hinde, did not deem it necessary to urge any arguments, but felt bound to state that the understanding of his client was, that all advances were to be secured by the deposits.

Turner and Mylne for Thomas Foster Hinde.

Bethell, for the assignees, had two objections to make in point of form. In the first place, all parties had agreed to abide the decision of a different tribunal, the plaintiffs having in March last presented a petition to the Court of Review for realizing the securities and sale of the fixtures, and prayed that after payment of the costs the produce should be applied in liquidation of the sums due on the securities, and that the surplus should be paid to the assignees. On the 19th of March last an order was obtained on this petition, under which the banking company were to be at liberty to set a value on the premises included in the deposits, and the petitioner, as representing the company, was to be at liberty to make any claim which might be deemed necessary beyond the sum that might be so fixed, thus admitting it to be a debt due from the present partners. That petition being in existence at the time the bill was filed, precludes the plaintiff from seeking a different species of relief. Another objection was, that there were other incumbancers on the property comprised in the memoranda of deposit, who were not parties to the record. Then with regard to the memoranda of deposit, which constitute the only case of the plaintiffs, they were confined to advances which might be made to the individual partners who signed them, and such express contracts cannot be altered or enlarged by parol. The words of the memoranda were: "We have deposited, &c. for securing any sum or sums of money which may at any time become due from the present firm, or from any subsequent firm, on any account whatsoever," and thus the express language of the contract was confined to the four, or any partnership which the four might contract. The partnership articles had no application to the case, as the memoranda related to the interest of William Hinde at the time they were signed. *Ex parte Marsh, in re Carhill*, 2 Rose, 239. To shew how difficult it was to extend an agreement of such a description where there was a change of partnership, he referred to *Ex parte Trimmer*, 2 Rose, 328.

The Master of the Rolls.—It cannot be said to be clear that the plaintiffs have made out a *prima facie* case for a receiver, when the questions may be of such a nature as to be capable of being determined only at the hearing; and,

with regard to the claim to the fixtures attached to the leaseholds, there is considerable difficulty in deciding upon it. All parties interested in the property included in the liens must also be brought before the Court.

Bethell, having here intimated that the assignees were willing to bring into Court the amount received by them for rent, and to account for the fixtures, an order was finally agreed to, by which the assignees were to pay into Court on affidavit all monies received by them on account of rent since the date of the order of the Court of Review; and also to account in like manner for any sums which might be received by them on account of the fixtures. The bill to be amended by making the other incumbrancers parties, and any of the parties to have liberty to apply.

Fearenside v. Derham, July 30th, and 31st.

Queen's Bench.

[Before the Four Judges.]

ATTORNEY.—LIABILITY.—MARSHAL —
ESCAPE.

A plaintiff, at whose suit a defendant had been charged in execution, became bankrupt. His attorney in the country proved under the fiat. The London agents afterwards signed an order directed to the marshal, and authorising the discharge of the person in custody under the execution, in consequence of which he was discharged. The assignees of the plaintiff in the suit afterwards brought an action, and recovered against the marshal as for an escape. The Court granted a rule, calling on the attorney and the agents to shew cause why they should not pay to the marshal the money recovered from him by the assignees.

The Attorney General moved for a rule to shew cause why Messrs. Wilmot, Capes, and Stuart, should not be ordered to pay to the marshal a sum of 232*l.* 10*s.* 11*d.*, under the following circumstances. A person had been sent to the Queen's Bench Prison, charged in execution. While there the plaintiff in the suit became bankrupt. An order signed by Mr. Capes, as attorney, for the plaintiff was sent to the prison, authorising the discharge of the defendant, who had been charged in execution. The marshal, being ignorant of the fact of the bankruptcy of the plaintiff in that suit, discharged the defendant. Assignees were subsequently appointed under the fiat, which had issued against the plaintiff, and they brought an action against the marshal for an escape. The marshal was held liable, and had to pay the sum of money, which he now sought to obtain by this rule from the attorneys. The application was against Messrs. Wilmot, Capes, and Stuart. The first was the country attorney of the plaintiff, the others were in partnership as his London agents, and the order was signed by one of the latter gentlemen, after Mr. Wilmot had proved under the fiat.

The Court granted the rule.—*Ex parte the Marshal of the Queen's Bench Prison, in re Wilmot, Capes and Stuart*, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

EJECTMENT.—PAYMENT OF COSTS BY THIRD PARTY.—DEFENCE.

A third person having and claiming no interest in property sought to be recovered in an action of ejectment, in which the plaintiff is successful, cannot be compelled to pay the costs of it, where the defendant is insolvent, although he may have influenced the defendant to defend the action, and supplied him with some funds to proceed with the defence, and that from vexatious motives.

In this case, which was an action of ejectment, the defendant was in insolvent circumstances. A person named Proud, as it was suggested, from vexatious motives, interfered to induce the defendant to defend the action, and even supplied him with funds to proceed with his defence. Proud, however, claimed no interest in the premises sought to be recovered by the action, in the event the plaintiff was successful. The defendant being unable to pay these costs, a rule nisi was obtained by James, for compelling Proud to pay the plaintiff his costs of the action, on the ground of the interference on his part, by which, it was said, that he had become a substantially litigant party.

Theisiger and Miller shewed cause against this rule, and contended, that the mere fact of the interference suggested on the other side, Proud claiming no interest in the premises, would not authorize the Court to compel him to pay the costs of the action. None of the cases in which third persons had been compelled to pay the costs of causes, to which they were not parties, were at all analagous to the present. Where, for instance, an action was brought against a tenant of a house, and the landlord in part set up his own title under the name of his own tenant, it might be different; here, however, no such state of facts existed. Perhaps, as Proud was a stranger to the property, and he had promoted this defence, he might be liable to a criminal proceeding for maintaining suits contrary to the common law; that, however, could furnish no reason for making the present rule absolute. The case of *Hayward v. Giffard** was a direct authority against this application. That was an action on the case, and there a party had interfered, who was substantially party to the proceeding, and the Court refused to compel him to pay the costs of the action.

Platt and James supported the rule, and contended that the principle on which the courts had interfered to compel persons, not parties to the record, to pay the costs of actions, was mistaken on the other side. The Court had always looked beyond the record, to see who was the party really litigating. In the present case, and on the affidavits on both sides, there could be no possible doubt that Mr. Proud was the person really litigating. The fact of his having no legal interest in the pro-

party, was an additional reason for compelling him to pay the plaintiff's costs. He had some motive for interfering, which, although not amounting to legal interest, was sufficient in his own mind to induce him thus to act, and prevent the defendant from yielding without litigation to the lawful and well-founded claims of the plaintiff. This was sufficient to prevent his being shielded from the consequences of his own improper promotion of the defence. The Courts thus punished persons who had secret claim to the property, and whose interference was therefore to a certain extent excusable. Surely, where a person of his own malignant disposition, and without any kind of pretence, chose to act in this manner, to delay a party in the acquisition of his rights, he was properly bound to pay the costs thus improperly through his means incurred.

Cur. ado. vult.

Williams, J., was of opinion that he ought not to interfere by making the present rule absolute. He was not aware of any case in which a party had been employing another to defend, or who had engaged the attorney, and supplied money, but who did not claim any title to the property in question, who had been made to pay the costs of the action. He considered the remarks of Mr. Justice Bayley, in *Thrustout v. Shenton*, of much consequence. That learned judge there intimated, that supposing a party to be shewn to be in reality defending, and at the same time putting forth a pauper apparently to defend, it was competent for the lessor of the plaintiff to apply to set aside the consent rule, with costs, and to be permitted to sign judgment against the casual ejector, unless the landlord came in and defended. Here it appeared from the affidavits that every thing which Proud did was well known to the lessors of the plaintiff. Every thing that took place as to his interference occurred before the action was commenced, and before the trial took place. Had Proud therefore placed himself in such a position as to call for the interference of the Court, there were sufficient materials upon which the lessor of the plaintiff might have founded his application, either before action brought, or during the time it was proceeding, and prior to the costs in question having been incurred. No case having been cited where a party has been made to pay the costs of such an action, when claiming as landlord, his Lordship feared to carry the practice further, stating it as his opinion that Proud had interfered from bad or vexatious motives. He should therefore discharge the rule.

Rule discharged.—*Doe d. Wright v. Smith*, E. T. 1840. Q. B. P. C.

AMENDMENT.—NUL TIEL RECORD.—LACHES.—TRIAL.

An amendment will be allowed in a replication to a plea of nul tiel record, although a trial has taken place on an issue of not guilty on the same record.

In this case, which was an action for a malicious prosecution, the defendant pleaded that

he was not guilty, and that there was no such record as that of the plaintiff's acquittal, as alleged by him in the Court of the Recorder of Bath. The plaintiff replied, praying an inspection of the record. A trial then took place on the plea of not guilty. Subsequently an application was made, and a rule obtained, to amend the prayer of the replication, by praying a *certiorari* to the recorder of Bath to certify the tenor of the record there remaining.

Sir *W. Follett* appeared to shew cause against this rule, and contended that as the trial had taken place on the plea of not guilty, it was too late to make the amendment now sought to be made. It was, in fact, seeking to amend the issue between the parties, on which they originally intended to proceed to trial.

Butt, in support of the rule, submitted that this could not be regarded as any alteration of the issue. It was merely an alteration in the mode in which evidence in support of the issue was to be obtained. In the case of *Farwig v. Cockerton*,^a where it was adjudged by the Court that if there was a variance between the issue and the writ of trial, it might be amended at any time. That was a direct authority in support of the present application.

Coleridge, J., thought that the amendment ought to be allowed, the plaintiff paying the costs incurred by the amendment.

Rule absolute.—*George v. Rooke*, E. T. 1840. Q. B. P. C.

EJECTMENT.—AFFIDAVIT OF MERITS.—ATTORNEY'S CLERK.—ATTORNEY.

Where an affidavit of merits is made by an attorney's clerk, who describes himself as the managing clerk of the attorney, in order to render it sufficient, it is necessary that the affidavit should state that he had the management of the particular cause in question.

In this case, which was an action of ejectment, the plaintiff had been nonsuited in consequence of the defendant not appearing to confess lease, entry, and ouster. A rule was obtained to set aside the nonsuit on the ground of the accidental absence of the attorney, and other causes. An affidavit of merits was also produced. It was sworn by a person who described himself as the managing clerk of the attorney. It did not contain any statement that the deponent had had the management of the cause in question.

Crennell shewed cause against the rule, and contended that the affidavit of merits was insufficient. Properly, such an affidavit ought to be made by the attorney in the cause; if made by his managing clerk, it ought to shew that the managing clerk had the management of this cause; otherwise, it was quite consistent that he knew nothing about the cause.

James in support of the rule, contended that the affidavit describing the clerk as the mana-

ging clerk, it must be assumed *prima facie* that he had the management of all the causes in the office.

Williams, J. thought the affidavit insufficient, as it ought to have stated the clerk to have the management of the particular cause in question. That was the usual practice, and there was no reason for departing from it in this particular instance. The present rule must therefore be discharged.

Rule discharged.—*Doe d. Fisk v. M'Donnell*, E. T. 1840. Q. B. P. C.

SHERIFF'S RETURN.—RECORDARI FACIAS LOQUELAM.

Where a plaint in replevin has been levied in the sheriff's court, and a writ of recordari facias loquelam is issued, the sheriff ought to make his return, by stating positively whether there is any plaint pending in his Court, and not make a statement of all the proceedings which had taken place before him.

In this case a plaint in replevin had been levied in the Sheriff's Court, and a writ of *recordari facias loquelam* issued. Previous to the writ issuing, certain proceedings had been had in the Sheriff's Court, and judgment of *retorno habendo* pronounced for the plaintiff. When the sheriff made his return, he did not state positively whether any plaint was pending, but set forth in his return the steps which had taken place between the parties, down to the time of the receipt of the writ.

Montague Smith obtained a rule to shew cause why the return thus made should not be set aside.

Greenwood shewed cause against this rule. He contended that the return was sufficient. It might be a matter of doubt whether the plaint was pending or not. Whether it was or not, depended on the opinion the Court might form. If the proceedings were no longer pending, the sheriff could make no further return, and all matters contained in the return, beyond the mere statement of the non-pending of the plaint, might be discarded as immaterial. If the proceedings could be considered as pending, then the sheriff had returned all that was in his power to return. Either way the return was good, as it was the only one which it was in the sheriff's power to make.

Montague Smith contended in support of the rule, that it was the duty of the sheriff to state in his return whether any plaint was or was not pending in the County Court; and not to leave it for the court to determine what the state of the proceedings below was.

Williams, J., was of opinion, that it was the duty of the sheriff not to make the argumentative return now before the Court. He was required to record the plaint. He must know whether any plaint was or was not pending. If none was pending, none could be recorded; if any was pending, he was bound to record it. He had no right thus to call on the Court to judge for him whether any plaint was or was

not pending. He ought to state positively whether the plaint was pending or not. The present rule must therefore be made absolute.

Rule absolute.—*Waight v. Lewis*, E. T. 1840. Q. B. P. C.

INDORSEMENT OF PROCESS.—RESIDENCE.—ATTORNEY.—IMMATERIAL OMISSION.

Where a party describes himself as the person issuing a writ, and mentions his address, without introducing the words "who resides at," according to the form given in the schedule attached to the Uniformity of Process Act, the omission does not invalidate the writ.

In this case the plaintiff, who was an attorney, issued a writ of summons in person. On the back of the copy served he placed this indorsement. "This writ issued by Charles Coppice, in person, 18, Adam Street, Adelphi, in the county of Middlesex." In the schedule to the Uniformity of Process Act, the words "who resides at" are introduced previous to the statement of the address. On the ground of this omission,

Bayley obtained a rule to set aside the copy of the writ, and the service of it.

Humfrey shewed cause against the rule thus obtained, and contended that the omission complained of was immaterial, as no additional information would be conveyed by the introduction of the words omitted.

Bayley, contra, submitted that as the statute prescribed a certain form to be adopted, that ought to be strictly pursued. If not, it amounted to an irregularity.

Coleridge, J., thought the omission was of no consequence, and therefore directed the rule to be discharged.

Rule discharged.—*Coppice v. Hunter*, E. T. 1840. Q. B. P. C.

THE EDITOR'S LETTER BOX.

The letters of W. C.; "Civis A.†" and "One who has been an Articled Clerk," shall be attended to.

The case sent by a "Solicitor and an Old Subscriber," will probably be inserted as soon as we can make the requisite research.

It does not appear that the act 5 & 6 W. 4, c. 62 (the Abolition of Oaths Act), extends to Scotland.

A "Solicitor at Manchester," whose letter we inserted on the 15th August, relating to Parliamentary Agency, is requested to send us his name in confidence.

Part III. of the Analytical Digest for 1840 is now published.

Many of the back numbers having been reprinted, imperfect sets of this work may now be made up, by order given to any bookseller.

The Legal Observer.

MONTHLY RECORD FOR AUGUST, 1840.

—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE PUBLICATIONS OF THE RECORD COMMISSIONERS.

ANCIENT LAWS AND INSTITUTES OF ENGLAND.

WE are glad to call the attention of our readers to the new volume just published by the Record Commissioners. We deem this to be one of the most interesting of the series, whether considered in reference to the legal or general reader, although there may have been several works of greater antiquarian curiosity. It is intitled "Ancient Laws and Institutes of England, comprising Laws enacted under the Anglo-Saxon Kings, with an English translation of the Saxon; the Laws called Edward the Confessor's; the Laws of William the Conqueror; and those ascribed to Henry the First; also Monumenta Ecclesiastica Anglicana, from the 7th to the 10th century; and the ancient Latin Version of the Anglo-Saxon Laws, with a compendious Glossary, &c."

We propose, in the first place, to make some extracts from the able preface of Mr. Thorpe, the learned editor of the volume, describing the *legal* part of its contents; and in the next, to select some parts of the laws of Alfred by way of "samples." The *ecclesiastical* and other portions of the volume, we shall leave to those whom they more immediately concern.

"The laws of the Kentish kings are known to us only from one manuscript,—the *Textus Roffensis*, preserved in the library of the Dean and Chapter of Rochester, compiled under Ernulf, bishop of that see, from 1115 to 1125. That these laws have descended to us in their primitive state it would be unreasonable to suppose; at the

same time, I am inclined to the belief that they approach more nearly to it than is generally imagined. At all events, their language, besides exhibiting occasional Archaic forms, is not that of the days of Ernulf. Of these laws no ancient Latin version is known to be extant.

The succeeding laws of Alfred, Ine, and their successors, to those of Cnut, require but little notice in this place. Those of Ine, which in the manuscripts are annexed to Alfred's, and even numbered with them, so as to form, as it were, a continuation of Alfred's Code, are, for that reason, placed after them in the present volume; it being probable, as has been suggested, that the edition we possess was designed for the use of the West Saxons, while another, (now lost), with the Institutes of Offa in like manner appended, was destined for the inhabitants of Mercia.

Preceding the laws of Edgar is the valuable document, '*De Hundredo Tenendo*' now first printed from the unique manuscript in the library of Corpus Christi College, Cambridge. The Latin version or text will be found in its place at the end of the volume, freed, by the aid of manuscripts, from most of the corruptions which so lamentably disfigure it in the edition given by Bromton.

Among the statutes of Ethelred, the document entitled '*De Institutis Londoniæ*,' has a great claim to interest on account of its importance to the commercial and monetary history of England. It is printed, though very unintelligibly, in Bromton, where it is made to form an appendage to the *Conc Wanelingense*, but there are several manuscripts of it in our libraries from a collation of which the text now given has

been derived, which it is hoped, though by no means free from corruption, will be found sufficiently so as to obviate all difficulty with regard to its sense.

Immediately following the Laws of Cnut, is the curious document entitled "*Rectitudines Singularum Personarum*," the Saxon original of which exists, I believe, in one manuscript only, belonging to the Library of Corpus Christi College, Cambridge. This piece is valuable, as presenting us with an enumeration of the several classes of persons employed on a domain, of the service to be rendered by each, and of the reciprocal duty of the lord to those engaged on his land. This document presents difficulties to the modern student, arising from our want of acquaintance with many of the usages therein mentioned, though an attempt at the illustration of some will be found in the Glossary appended to the work; it was, therefore, deemed advisable to annex to it the Latin version, from a collection of manuscripts, in place of an English one, of which it seems hardly susceptible.

The French text of the Conqueror's Laws is chiefly from a valuable manuscript at Holkham, formerly the property of Sir Edward Coke, bearing his autograph, and still in the possession of the Right Honorable the Earl of Leicester. The text contained in this manuscript bears signs of great antiquity, and (if the Laws of William were really composed in French) is, from its dialect, much more likely to be a nearly faithful representation of the original than that most corrupt one transmitted to us in the work bearing the name of Jugulph.

Unfortunately the Holkham text is incomplete, not reaching further than to the twenty-eighth chapter. Its deficiency could only be supplied from the printed text; though the real loss sustained is greatly diminished by the superiority of the Latin edition now given from a Harleian manuscript over that printed by Wilkins from the Lichfield Chronicle.

The charter (Wil. 4, p. 213) directing the separation of the civil and ecclesiastical courts is here given, both on account of its intrinsic importance, and of reference made to it in the annotations to the laws of Henry 1. Had the design of continuing this work to a later period not been abandoned, it would have been reserved for the place to which it naturally belongs.

The Laws of Henry 1. will, it is hoped, be found to exhibit a few corrections (chiefly from the Red Book of the Exchequer, which

has been carefully collated for the purpose) whereby some difficulties have been removed, and the sense restored. Attention has also been directed to the reformation of the punctuation, and the subdivision into sections will necessarily tend greatly to facilitate citation from this code.

With respect to their substance, the laws ascribed to Henry 1, but evidently the unauthorized compilation of an individual, are derived from various sources, most of which will be found specified in the notes of Somner and others subjoined to the text; but the portion chiefly valuable to us is that which has preserved many fragments of Anglo-Saxon law, of which traces nowhere else are known to exist, either in original or translation."

In submitting to our readers the following extracts from the Laws of Alfred, we give only the Editor's translation and omit the Saxon, except in regard to the words which he has incorporated in his version. Such of these words as appeared to require explanation we have added from the Glossary, which is appended to the volume. Where the explanation appeared doubtful, we have selected the most probable version.

"I, then, Alfred, king, gathered these together, and commanded many of those to be written which our forefathers held, those which to me seemed good; and many of those which seemed to me not good I rejected them by the counsel of my 'witan' [*council*] and in otherwise commanded them to be holden; for I durst not venture to set down in writing much of my own, for it was unknown to me what of it would please those who should come after us. But those things which I met with, either of the days of Ine my kinsman, or of Offa king of the Mercians, or of Æthelbryht, who first among the English race received baptism, those which seemed to me the rightest, those I have here gathered together, and rejected the others.

"I, then, Alfred, king of the West-Saxons, shewed these to all my 'witan,' and they then said that it seemed good to them all to be holden."

OF OATHS AND OF 'WEDS' [*Pledges*].^a

At the first we teach, that it is most needful that every man warily keep his oath and his 'wed.' If any one be constrained

^a The language of the original writ in the Court of King's Bench, agrees with the form of process here mentioned: "If *N. N.* shall give you security of prosecuting his claim, then put by *gages and anfe pledges, A. B.*" &c.

to either of these wrongfully, either to treason against his lord, or to any unlawful aid; then it is juster to belie than to fulfil. But if he pledge himself to that which it is unlawful to fulfil, and in that belie himself, let him submissively deliver up his weapon and his goods to the keeping of his friends, and be in prison forty days in a king's 'tun' [town]; let him there suffer whatever the bishop may prescribe to him; and let his kinsmen feed him, if he himself have no food. If he have no kinsmen, or have no food, let the king's reeve feed him. If he must be forced to this, and he otherwise will not, if they bind him, let him forfeit his weapons and his property. If he be slain, let him lie uncompensated. If he flee thereout before the time, and he be taken, let him be in prison forty days, as he should before have been. But if he escape, let him be held a fugitive, and be excommunicate of all Christ's churches. If, however, there be another man's 'borh' [surety], let him make 'bot' [amends] for the 'borh-bryce' [breach of surety], as the law may direct him, and the 'wed-bryce,' as his confessor may prescribe to him.

OF CHURCH 'BOONS' [Sanctuary].

If any one, for whatever crime, seek any of the 'mynster-hams' [monastic habitations] to which the kings 'feorm' [farm] is incident, or other 'free-hired' which is worthy of reverence, let him have a space of three days to protect himself, unless he be willing to come to terms. If during this space, any one harm him by blow, or by bond, or wound him, let him make 'bot' for each of these according to regular usage, as well with 'wer' [price] as with 'wite' [fine]; and to the brotherhood one hundred and twenty shillings, as 'bot' for the church 'frith' [peace], and let him not have 'forfogen' [prejudice] his own.

OF 'BORH BRYCE' [Breach of Surety].

If any one break the king's 'borh,' let him make 'bot' for the plaint as the law shall direct him; and for the 'borh-bryce' with v pounds of Mœrra pence. For an archbishop's 'borh-bryce,' or his 'mund-byrd,' let him make 'bot' with three pounds; for any other bishop's or an 'ealdorman's' 'borh-bryce,' or 'mund-byrd' [guardianship], let him make 'bot' with two pounds.

OF PLOTTING AGAINST A LORD.

If any one plot against the king's life, of himself, or by harbouring of exiles, or of his men; let him be liable in his life, and in all that he has. If he desire to prove himself true, let him do so according to the

king's 'wer-gild' [price for guilt]. So also we ordain for all degrees, whether 'ceorl' [churl] or 'eorl' [earl]. He who plot's against his lord's life, let him be liable in his life to him, and in all that he has; or let him prove himself true according to his lord's 'wær.'

OF CHURCH-'FRITH' [peace].

We also ordain to every church which has been hallowed by a bishop, this 'frith': if a 'fah' [foe] man flee to or reach one, that for seven days no one drag him out. But if any one do so, then let him be liable in the king's 'mund-byrd' and the church 'frith'; more, if he there commit more wrong, if, despite of hunger, he can live, unless he fight his way out. If the brethren have further need of their church, let them keep him in another house, and let not that have more doors than the church. Let the church-'ealdor' take care that during this term no one give him food. If he himself be willing to deliver up his weapons to his foes, let them keep him xxx days, and let them give notice of him to his kinsmen. It is also church-'frith,' if any man seek a church for any of those offences, which had not been before revealed, and there confess himself in God's name, be it half-forgiven. He who steals on Sunday, or at Yule, or at Easter, or on Holy Thursday, and on Rogation days, for each of these we will that the 'bot' be two fold, as during Lent-fast.

OF STEALING IN A CHURCH.

If any one thief aught in a church, let him pay the 'angylde' [rate fixed], and the 'wite' [fine], such as shall belong to the 'angylde'; and let the hand be struck off with which he did it. If he will redeem the hand, and that be allowed him, let him pay as may belong to his 'wer.'

LAW OF ATTORNEYS.

BILLS IN PARLIAMENT IN 1708.

IN looking at the several alterations which have been effected in the Law relating to Attorneys, it may be useful to shew what was done by the practitioners in former times. With this view we are enabled to lay before our readers the following papers regarding a bill brought into parliament upwards of 130 years ago.

The first paper is "The Case of the Attorneys and other Practisers, relating to the stamp duty."

"By a clause in the act made the first year of her Majesty's reign, [Queen Anne] intituled, 'An act for preventing frauds in her Majesty's duties upon stamp vellum, parchment and

paper: It is enacted, that the attorney employed to file bail, or enter an appearance, shall file such bail or enter his appearance for a defendant, within four months' time after the time he undertakes so to do, or he forfeits 20*l*. for his omission.'

"And by another clause in the same paragraph of the same act, it is enacted, 'That if any clerk, officer, attorney, &c. shall transact, enter, record or file any farther or other proceeding, matter or thing subsequent, and relating to such action, plaint, bail, or appearance, before the same shall have been duly entred, filed, or recorded, that then every such officer, clerk or attorney, so neglecting or offending, shall for every such offence or neglect forfeit 20*l*.'

"So that by a forced construction of the said second clause, there is a double forfeiture incurred for the same thing, the one by the defendant's attorney, for his omission, the other by the plaintiff's attorney, for his proceeding; for if the attorney for the plaintiff in any suit, deliver a declaration to the defendant's attorney, before the defendant's attorney hath filed bail, or entred an appearance, such delivery of a declaration and proceeding thereon, is such transaction in the cause as will subject the plaintiff's attorney to the penalty of 20*l*., and other disabilities, for proceeding in the cause before the defendant's attorney hath filed his bail, or entred his appearance, which is to punish one person for the offence of another, which is against natural justice.

"For if for fear of this forfeiture the plaintiff's attorney shall forbear to deliver the declaration till the end of four months, which time the defendant's attorney hath given him for filing his bail or entering his appearance, then the plaintiff will lose so much time, and in many cases must inevitably lose his debt or thing sued for; or if he does proceed before bail filed, or appearance entred, then he forfeits as aforesaid, which is humbly conceived could never be the intent and meaning of the law-makers.

"And yet there are informations exhibited against many hundred attorneys, for several great sums of money, upon this hard construction of the act, which the attorneys could never be aware of, being so contrary to common justice and reason, and will inevitably ruin the practicers of the law, and their families, if prosecuted.

"The duty to the Queen for such bail or appearance is but 1*s*., and for some other things but 2*d*., yet the penalty in all cases is 20*l*., and disability to practise ever after. And the same penalty may be incurred by the attorneys for the plaintiff, and also for the defendant, for one and the same fault.

"Wherefore it is humbly prayed, that this honourable House would provide some remedy for the said grievance, so that one person may not incur so great penalties for the neglect or omission of another."

The second paper is "An Abstract of a Bill in Parliament for redressing and preventing several frauds and practices relating to the

stamp duty, and reducing the number of Attorneys and Solicitors practising in the Courts at Westminster."

"Bill recites part of the first clause, in the act of the first year of this Queen, (intituled, 'An act for preventing frauds in her Majesties duties upon stamp vellum, parchment, and paper,') whereby it is enacted, that from and after the 25th day of March, 1703, if any person employed or intrusted to enter or file any action, bail, appearance, or other thing chargeable with the stamp duty, shall neglect to file or enter the same, before any subsequent proceeding shall be made: or if he makes any subsequent proceeding before the prior be duly done, he shall for every such offence forfeit the summ of 20*l*., with full costs of suit, which amounts to a double penalty for one offence.

"Bill also recites, the clause in the act of the 5th year of the Queen, for payment of annuities, to be sold for raising a further supply to her Majesty, for the service of the year 1707. Whereby it is enacted, that the several persons who through inadvertency or misconstruction of the acts for securing the stamp duties, had omitted the entering and filing of actions, bayls, and appearances, should be indemnified against the penalties, provided, they should pay the several duties omitted before the 23d of November last.

"And the bill sets forth, that by reason of the difficulty in preparing a particular charge of the omissions of every attorney, they could not perform the terms of the said indemnity, within the time limited, but have now answered to her Majesty their several charges for their omissions.

"The bill therefore enacts, that every person who hath so offended, shall be indemnified against the penalties by them incurred.

"The bill further sets forth, that the said clause in the act of the first of the Queen, subjecting all attorneys to daily forfeitures, as well through misconstruction of the said clause, as for small and immaterial delays of paying duties, effectually secured elsewhere in the said act, and enforcing the recording of divers unnecessary proceedings, which often proves highly prejudicial to the suitors.

"The bill therefore enacts, that the said clause (as to so much thereof as is therein recited) shall be repealed.

"The bill further sets forth, that most frauds touching the duties are committed by illiterate and indigent persons, who having not been educated as clerks, nor qualified, do yet presume to solicit and prosecute suits in law and equity, in the names of sworn clerks or attorneys, who (though no way concerned) yet are chargeable with the duties in such suits.

"And therefore the bill enacts, that every person who after the 13th of February, 1708 shall sollicite any suit in any of the Courts at Westminster, and shall not first be a sworn clerk, attorney, or officer of one of the said Courts, or be one of the waiting clerks to one of the Six Clerks in Chancery, or have served five years a clerk to one of the sworn clerks in Chancery, in the office of Queen's Remem-

brancer, or sworn attorneys in the Office of Pleas in the Court of Exchequer, or be before the said 13th day of February, 1708, specially admitted by the Lord Chancellor, Lord Keeper, Master of the Rolls, or Barons of the Exchequer, to practice as a Solicitor in the Courts of Equity; (which admission shall be stamped with such stamp as the admission of an attorney at law) shall be deemed a *common barrator*, and have no remedy for recovering his fees and disbursements therein, provided that any person may manage any cause wherein he or any of his kin shall be a party, or lawfully interested, so as he do not take or charge any fee or reward for his so doing.

"And it is further enacted, that every person who shall from and after the 13th day of February, 1708, practice in the Courts of Queen's Bench or Common Pleas at Westminster, in the name of any other attorney or clerk without his consent first had under his hand and seal, shall forfeit for every offence the sum of 20*l.* with full costs; and that no such consent shall be good to any person, not being then an attorney of one of the said Courts.

"And for the better preventing ignorant and illiterate persons from being admitted attorneys in the said Courts at Law, the bill further enacts, that from and after the thirteenth day of February, 1708, no person shall be admitted an attorney or entering clerk in the Courts of Queen's Bench and Common Pleas at Westminster, or be a solicitor in the Courts of Equity, unless it shall first appear by affidavit that he has served five years a clerk to some attorney or entering clerk or solicitor of one of the said Courts, which affidavit shall be read in open court before such admission.

"And for the further preventing of frauds in her Majesty's said duties, and the better discovery by whom the same shall be committed; the bill further enacts, that every philizer or other officer in the said Courts at Law entering or filing any appearance or bayl shall give a note under his hand, acknowledging that every such appearance or bayl is entered and the duty paid, and shall stamp such note with the stamp of his office.

"Enacts also that any solicitor in the Courts of Equity at Westminster, admitted as aforesaid, may practice as a solicitor in any Court of Law, an attorney of the same Court being also employed by him, or his client, in the same cause."

The third paper contains "Reasons for passing the Bill relating to the Attorneys."

"The said attorneys humbly beg leave to premise, that before the bringing in of the said bill, they did (as they did apprehend was their duty) wait upon the judges, and her Majesties Commissioners for the Stamp duties, with a copy of the said bill; and did take it, that they had their consent for bringing the said bill into this honourable House. And accordingly they brought the same in timely enough to have a due consideration of the House; and it hath had the favour of the House to proceed so far, as only to want the third reading.

"The clause which concerns the releife of the attorneys principally is, that which repeals the clause 1 Anne, in the act intituled "An Act for Preventing Frauds in her Majesties Duties upon Stamp Vellum, Parchment and Paper."

"Which clause is made use of, chiefly to enforce attorneys to enter bails and appearances, which clause the said attorneys hope this House will be of opinion ought to be repealed, for these reasons, viz.

"1st. Because the fair practisers cannot be safe while this clause continues.

"2d. Because there is no occasion for this clause.

"3d. Because the penalties are not adequate to the offence.

"4th. Because the duty will be really advanced by the repealing this clause.

"1st. Because the fair practiser cannot be safe while this clause continues."

"I. First from the general words that says that no subsequent matter shall be done, till the duty for preceeding matters are paid. In which case 'tis hard to say, especially in a cause of length, when all preceeding matters are paid, especially if it shall be construed, as in the case of appearances, that some things are to be done for the sake of the duty, which are not necessary to be done for the sake of the client.

"II. Because the proper evidence for the attorney that he hath done his duty, which is the evidence of the record itself, is taken away by this clause. If the attorney enter the appearance himself, he can be no witness, nor the record a witness for him, if he be sued. If he sends his clerke, either by the fraud or negligence of his clerke, or the officer's clerke that he shall enter the appearance, it may not be done, and the attorney is cheated 12*d.*, and must pay 20*l.* for it, with full cost of suite, and dissabillity.

"2ly. Because there is no occasion for this clause.

"For not to mention, that this fraud would be against the attorneys' oath, or, that the judges have not thought fit ever to enforce the entering of these appearances, tho' these offices where the appearances are entered are in the judges dispose. There is a clause in a former act that inflicts 5*l.* upon the defendant, where a defendant is arrested, and no appearance entered; and this is a very extraordinary way, for 'tis without the defendants being summoned to answer upon sight of the return of the writ. But 'tis

"*Object.* That this penalty falls upon the defendant.

"*Answer.* 'Tis true, it does primarily, and for the defendant's attorneys' neglect the defendant in many cases shall suffer more than that; but 'tis manifest that this penalty will not rest upon the defendant, for he hath a plain action against his attorney for so great a neglect.

"Besides, it would be such a slur to the attorney, that no attorney can be supposed to let his client suffer so much, only to save the

charge of an appearance, tho' tis acknowledged some instances have been; but the putting that law in execution would soon cure that mischief.

"3ly. Because the penalties are not adequate to the offence.

"For every offence against this clause is 20*l.* and full costs of suit and disability; and in some cases the duty is but 2*d.*, and in most cases but 12*d.*

"4ly. Because the duty *will be* really advanced by the repealing this clause.

"It hath been very well observed, that the number of attorneys who have been sworn of late has been very few, and 'tis a very true observation, because no attorney can safely practice while this clause is in force. Now the duty upon swearing of an attorney is 4*l.*, and the duty of an appearance is but 1*s.*; so that the duty paid upon the admitting of an attorney pays for fourscore appearances.

"As to the computation of bails and appearances by the writs taken out, they think 'tis wrong.

"For let the number of writs be what it will, there must be these deductions out of that number.

"1st. Several writs are renewed, and so reckoned double. In the next place, upon process to the ultary, which are returned, of course no appearances can be expected.

"2dly. Writs being returnable at a time to come, and many of them at three months distance, there ought to be a deduction of all such as dye before the return, which in such a great number will not be a few.

"3dly. There ought to be a deduction of such as can't be arrested.

"4thly. There ought to be a deduction of such as make an end upon the arrest.

"5thly. There ought to be a deduction of so many as make an end of the suit before the return of the writ.

"6thly. There ought to be a deduction for all such as go to prison; and, these deductions being made, there can't be reasonably expected one appearance for 10 named in the writs.

"*Object.* But the attorneys take for these appearances whether they be entred or not.

"*Ans.* 'Tis a mistake; for an attorney may charge any thing wrongfully better than an appearance, in which he is so easily falsified by the officer's book, and which, if he should receive, an action would make him refund.

"And 'tis conceived that upon this violent prosecution of attorneys most appearances have been entred, which have come to no great matter, for the attorneys have paid all the informations were exhibited for, or any demand made of, to get rid of this hard prosecution, several informations having been filed for 12*d.* a-piece against the same attorney, and that without just cause, the duty having been paid before, when the whole demand against one attorney might have been put into one information.

"If any frauds have been committed in not entering appearances, it has been by those who

shelter themselves by practicing in others' names, which the design of this bill is to prevent.

"It appears by the informations filed against sworn attorneys, that the omissions of all the sworn attorneys of the Courts of Law at Westminster, within the compass of a year or thereabouts, amounted but to the sum of 125*l.* or thereabouts, according to the calculation made by the commissioners of the stamp duties, which summ the said sworn attorneys paid, though most of them were in causes they were never concerned in, and most of the rest wrongfully charged upon them, the defendants either having put in special bail, or being in custody.

"It is most certain that such prosecutions tend to diminish the duty rather than advance it, for that many sworn attorneys of good reputation and practice have already given over business. And all the rest that have either fortune or reputation to lose, will certainly do so too, if, notwithstanding all their care, they must be subjected to such penalties and scandal. And then business must fall into the hands of petty foggers and broken tradesmen, who will not be sworn, but practice in some prisoner's or obscure attorney's name, who cannot be answerable for the duty.

ANCIENT EGYPTIAN DEED.

A. C. 107.

"IN the reign of Cleopatra, and Ptolemy,* her son, surnamed Alexander; the Gods Philometores Soteres; in the year 12, otherwise 9; in the priesthood of the existing priests in Alexandria; the priest of Alexander, and of the gods Soteres, and of the gods Adelphi, and of the gods Euergetæ, and of the gods Philopatores, and of the gods Epiphanes, and of the god Philometor, and of the god Eupator, and of the gods Euergetæ; the prize-bearer of Berenice, Euergetis; the basket-bearer of Arsinoe, Philadelphius; and the priestess of Arsinoe, Eupator; at present in Alexandria, and in the Thebaic Ptolemais; in the priesthood of the existing priests and priestesses of Ptolemy Sator, and of _____, in Ptolemais, on the 29th of the month Tybi (5th February), Appollonius being president of the exchange of the Memnonians, and of the lower government of the Pathyritic nome.

There was sold by *Pamonthes*, aged about 45, of middle size, dark complexion and handsome figure, bald, round faced and straight nosed; and by *Snochomneus*, aged about 20, of middle size, sallow complexion, likewise round faced and straight nosed;

* These two, Cleopatra and Ptolemy, began their reign 107 years before Christ, and reigned 17 years and 6 months.

and by *Seumathis Peretnei*, aged about 22, of middle size, sallow complexion, round faced, flat nosed, and of quiet demeanour; and by *Tuthlyt Persinei*, aged about 30, of middle size, sallow complexion, round face, and straight nose, with their principal Pamonthes, a party in the sale, the four being of the children of *Petepsais*, of the leather-cutters of the Memnonia, out of the piece of level ground which belongs to them in the southern part of the Memnonia, *eight thousand cubits of open field*, one-fourth of the whole bounded on the south by the Royal Street, on the north and east by the land of Pamonthes and Boconsiensis, who is his brother, and the common land or wall of the city, on the west by the house of Tages, the son of Chalome, a canal running through the middle leading from the river; these are the neighbours on all sides. It was bought by *Nechutes the less*, the son of *Asos*, aged about 40, of middle size, sallow complexion, cheerful countenance, long face, and straight nose, with a scar upon the middle of his forehead, for 601 pieces of brass; the sellers standing as brokers, and as securities for the validity of the sale. It was accepted by *Nechutes*, the purchaser.

Apollonius, Pr. Exchange.

Registry.

In the year 12, otherwise 9, the 20th of Pharmuthes (8th May), transacted at the table in Hermopolis, at which *Dyonysius* presides over the 20th department, in the account of the partners receiving the duties on sales, of which *Heraclides* is the subscribing clerk; the acceptor in the sale is *Nechutes*, the less, the son of *Asos*; an open field of eight thousand cubits, one-fourth portion in the southern part of the Memnonia, which he bought of Pamonthes, and *Snochomneus*, the sons of *Petepsais*, with their sisters, six hundred and one pieces. The end.

Dyonysius subscribes."

It will be observed, that in many important respects this curious form of Egyptian conveyance strongly resembles that of our own country. It commences with the *date*, which is fixed according to the year of the reign of the sovereigns for the time being; to which is added a reference to the existing priesthood, and the president of the city of Alexandria, where the parties lived and the property was situated.

The names of the parties are then stated, and something of the pedigree of each is given. This may be supposed to correspond

in effect with the *recitals* of a modern conveyance. But there is this difference:—the identity of the parties seems to have been of more importance than the identity of the property. The vendors are not only described in their relationship to the previous (as we suppose) registered owner, but their age, stature, complexion, and appearance, are stated very much in the manner of a foreign passport. The purchaser also is minutely described, even to the scars on his person.

The "*parcels*" or description of the property sold, are stated in few words—eight thousand cubits in a common field. It is evident there was a general registry of the lands in Alexandria in those days, and therefore a particular description was unnecessary; but they had not the sagacity to discover the symbols, or to follow the mathematical methods of our real property commissioners. They resorted to our vulgar mode of giving the abutments on the north and south, and the other points of the compass.

Then follow the statement of the *consideration*-money, and a very concise covenant for *quiet enjoyment*.

The deed is then duly *registered*, by the president of the city of Alexandria, and the certificate of Registry, signed by the president, resembles the Scotch mode of authenticating the execution of documents, and is also like the form pursued by notaries public. There was evidently, also, an *auction duty* imposed at that time. There seems, indeed, to be nothing new under the sun.

We hope, from the same learned source to which we are indebted for this interesting muniment, that we shall be enabled to gratify our readers by further specimens of legal antiquity, which we deem peculiarly appropriate to the long vacation.

REMARKABLE TRIALS.

CASE OF COURVOISIER FOR MURDER.

HAVING since the commencement of this work stated nearly all the most remarkable trials, as well in recent as former times, it will probably be expected that we should add to the collection, several extraordinary cases lately tried in the Central Criminal Court. For the present, we select that of *François Benjamin Courvoisier*, who was indicted for the murder of his master, Lord William Russell, on the 6th day of May last.

The counsel for the prosecution were, Mr. *Adolphus*, Mr. *Bodkin*, and Mr. *Chambers*.

Those for the prisoner were, Mr. *Charles Phillips*, and Mr. *Clarkson*.

The able summing up of Lord Chief Justice *Tindal*, contains not only all the principal facts, but many valuable comments on the effect of the several points of evidence. The following is the substance of his lordship's address to the jury :

It would be their duty (he said,) to weigh the evidence well, in order to ascertain whether it was such as to warrant them in pronouncing the prisoner at the bar guilty of the murder of Lord William Russell; but if, after they had fully investigated, and carefully examined, the evidence laid before them, they should entertain any doubt upon the subject, it was his bounden duty to tell them, that the prisoner was entitled to the benefit of that doubt, and it would be their duty to acquit him of the charge. If, however, on the other hand, they should come to the conclusion that he, and he only, was the person by whose guilty hand the deceased nobleman met his death, it would be equally their duty, and they must not shrink from it, however painful it might be, to pronounce him guilty of the crime of which he was accused. The case was one of circumstantial evidence. No eye saw the act committed, but there were various circumstances brought forward in the course of the trial for their consideration, and it would be for them to say whether those circumstances were sufficient to establish the charge, and enable them to pronounce a verdict of guilty against the prisoner. With respect to circumstantial evidence, he would make this remark, that it would be impossible for the justice of the country to be duly administered, if evidence of that nature were to be excluded from the consideration of juries. Crimes of the darkest nature, and those which assumed the most serious aspect, were generally committed in privacy, and in the absence of all witnesses. It would therefore be giving an impunity to crime, if parties accused were to escape the consequences of their guilt, because no direct evidence was brought against them. But at the same time, it was the duty of juries to take especial care that the facts so submitted to their consideration were proved to their entire and complete satisfaction, so as not to leave any doubt in their minds, in considering the whole chain of circumstances submitted to them. In the present case, if, after weighing all the facts, they should come to the inevitable conclusion that the charge was brought home to the prisoner, it would be their duty to find him guilty. It would not, however, be enough for them to consider that the facts and circumstances adduced were sufficient to raise a strong presumption on his guilt, but they must exclude from their minds all reasonable doubts upon the question at issue before they pronounced their verdict of guilty. He would now proceed to state the general nature of the case, and he would then read over the whole of the evidence on which they would be

called upon to form their opinion, as to the guilt or innocence of the prisoner :

It appeared to be established beyond all doubt, that on the night of the 5th, or the morning of the 6th of May last, Lord William Russell was found murdered in his bed. A question was at first raised, whether it was possible that his Lordship had committed suicide; but the evidence upon that subject, as given by the medical witnesses and others, was so conclusive as to the impossibility of that being the case, that he deemed it useless to incur the case by considering that question. The absence of any weapon within reach of the deceased, and the nature of the wound inflicted, fully proved that his Lordship could not have been guilty of his own death. It was also clear that about 7 o'clock on the morning of the 6th of May, the house was found in the greatest confusion, so as to make it evident that a robbery had been planned if not executed, and certain articles which were found concealed on the premises left no doubt of the fact.

It was attempted to be shewn that this robbery was not connected with the murder of the deceased nobleman, but that the robbery and murder might have been effected by two sets of persons in the same night. The house it appeared had four doors to it, and it was proved in evidence that three of them were fastened on the night in question, but it was not quite clear that the front area gate had been locked. In the passage leading to the front door, various articles were found, and this door which had been locked, chained, and bolted, was found in the morning fastened only with the latch. The back area door was found open and certain marks were discovered upon it. Upon looking at the whole of the appearance on the inside of the house, it would appear at the first view that the premises had been entered in the course of the night by the back area door, and that the party or parties who had so effected an entrance had gone over the house, and, having committed the murder, and ransacked the property, (portions of which they concealed on the premises) had escaped through the street door without taking any booty with them. The first question was, by whom was this murder and robbery committed? was it a genuine robbery, or was the property found disposed of in the manner described, and the marks made on the door, with a view to divert the attention of the officers of justice, so that the guilty party or parties might escape detection? No part of the property had been removed from the premises, and it further appeared that some of the valuable articles, being portable, might easily have been removed. Was it possible to believe, that if thieves had entered the house for the purpose of plunder, they would have made their exit leaving so many small articles behind them which might so easily have been disposed of about their persons? Then, were the marks made upon the back area door the genuine marks of burglars, or had they been made for the purpose of its appearing that the house

had been forcibly entered in the night time, and a robbery committed?

Now as regarded the prisoner, he would advise the jury by all means, not to lay any stress upon the expressions he had first used at the time he was first seen in the house on the morning that the murder was discovered, nor did he think that they ought in fairness to attribute his agitation to guilt, for so great a disparity existed between persons placed under such circumstances, arising from their different feelings and dispositions, that it would be a harsh conclusion to draw against the prisoner that the agitation which he then exhibited was a symptom of his guilty knowledge of the murder; because it was natural enough for him to feel considerable agitation at the time, knowing that his master had been murdered, and the house robbed. He also prayed them not to take into consideration the observations of the learned counsel who had addressed them on the prisoner's behalf, who had in the course of his speech endeavoured to sway their minds in favour of the prisoner on the grounds of mercy. They sat in that box under the solemn sanction of an oath, and they were bound by that oath to deliver their verdict according to the evidence laid before them, regardless of consequences, however painful those consequences might be to them and to the prisoner. They were bound to decide upon the evidence, and upon that alone, so that in coming to a conclusion both their understandings and consciences should agree. Feelings of mercy towards a prisoner could not, and ought not, to be entertained by a jury, provided that they were satisfied of the guilt of a prisoner. He would, however, so far agree with the learned counsel who had addressed them for the defence, in this, that they were bound to put a favourable construction upon the facts adduced before them, and if any doubt should remain in their minds after considering the whole of the case, they were bound to give the benefit of that doubt to the prisoner. His Lordship then proceeded to read over the evidence, and to comment upon it as he proceeded.

In detailing the evidence of the first witness, Sarah Mancer, his Lordship said, that the first part of her evidence was not very material either one way or the other. It appeared that no person except the prisoner, the two female servants, and his Lordship, remained in the house on the night of the 5th of May. The area gate was not stated to have been fastened, but the area door was secured, and it was very improbable that after getting into the house, the thieves would take the trouble to fasten the door again. The probability therefore was that no entry was made at this part of the house. Sarah Mancer stated, that when she came down on the morning of the 6th, the cook was asleep, but in the evidence of the cook, she said that she was not asleep when the housemaid left the room. In this there might be a little variation, but it was not very important, and the jury would give to it the weight they considered it deserved.

It was natural that the prisoner, under whose

charge the plate was kept, should, upon hearing of the robbery, express considerable anxiety about the matter. It was stated in the course of the trial that the words used by Sarah Mancer, "Let us go and see where his Lordship is," were rather extraordinary; but, in looking at expressions made use of by the parties in a moment of anxiety and alarm, the jury would not have to confine the words to their strict interpretation. When the prisoner was in the dining-room, and was addressed by the housemaid in these words,—“What the devil do you do there? can't you go for some one, or a doctor?” the prisoner it was stated beckoned to a workman passing, but the housemaid checked him, and said that the man was not a fit person to send anywhere. In saying this she might at the time have considered that the man, in going to Belgrave Square, where Mr. Russell lived, might delay, or perhaps would not go at all, and that it would be necessary to send a person upon whom greater confidence could be placed.

The prisoner was also said to have used the words “Billy is a rum old chap.” The jury could not place much weight upon them, unless they bore directly upon the matter in question. These expressions were used by him in the hearing of his fellow-servants, but the great familiarity between servants and the time the words were uttered ought not to be lost sight of in judging of their importance. As to the additional expression used by the prisoner, “that if he had his Lordship's money he would not be long in England,” all the inference that could be drawn from that was, that he considered Lord William Russell was a person possessed of money.

The housemaid was cross-examined about using the words “I saw his Lordship murdered in bed.” She said she never used these words, and no person had been called to contradict her; but, after all, the expression itself really appeared to be a trivial expression, and could scarcely amount to a contradiction, although the words had been used. When the prisoner went down to the back area door, he said, “Oh dear, here it is they came in;” but those words were not conclusive one way or the other. It might be a very natural expression for an innocent person to make on seeing marks on the door.

The witness Selway gave evidence regarding the state of the house, and the adjoining premises. He described the walls and leads, and saw no marks on either. It would be therefore for the jury to say what weight could be given to this evidence. No person could have got from one house to the other without crossing the leads, which were covered with dust, and that dust was undisturbed. The witness John Baldwin, the police constable, also gave evidence as to the state of the leads and the walls, but he gave this testimony in such a way that it would be dangerous in such a serious inquiry as this to give any credit to it. There was another officer, named Rose, who gave similar evidence, and the jury could take his statement into consideration.

It had been said, that if the prisoner took the articles, it was unlikely that he should place them in his own pantry; but in considering this part of the case the jury would judge whether the person who placed the articles there did not conceive that they were so concealed as to defeat discovery. If there was any doubt however about this circumstance, it was only fair that the jury should adopt the most favourable course to the prisoner.

With respect to the dressing case, it appeared that the top was wrenched off, and it had been stated that there was no necessity for doing this, as it must have been opened first. It would certainly be idle in any one, after breaking open the case, to consume time by wrenching off the top. It had been suggested that the box was first opened by a key, and the violence done to it afterwards. In breaking into a house, the thief was expected to act in the ordinary way that dishonest persons obtaining access to premises they intend to rob usually did; but here a different course had been pursued. Instead of getting into the house by the glass door, which would have given easy access to the thief, it would appear that he must have let himself down into the lower area, and broken open the door there, which required considerable force.

Some observations had been made about finding the gloves and handkerchiefs secreted in the prisoner's partmanteau, and it was stated that they must have been placed there in order to bring the prisoner within the consequences of a verdict of guilty. The jury would consider whether, on the previous search, when all the shirts were taken out and placed upon the bed unfolded, the gloves and handkerchiefs could have escaped notice, and whether any one could be capable of making up the chain of circumstances in order to convict the prisoner at the bar. They would also consider whether, if this had been intended, more decisive steps would not have been taken, for scarcely any blood appeared upon the gloves and handkerchiefs, and it might be supposed that if the party who committed the murder wore those articles at the time, they would not exhibit more marks than those produced.

In reference to the questions put to the prisoner by the police inspector, there could not be any objection to putting a fair question to him, but if it were put for the purpose of entrapping him into a confession, which might be used in evidence against him, it was most unfair. If it should be that the words "Can you look me in the face" were used with an honest intention, the officer could not be blamed, and certainly no blame was attached to Mr. Mayne.

Again, it was said that less credit should be given to the testimony of Inspector Pearce, as he expected a reward. This was no doubt a question for the consideration of the jury, and they would judge what degree of credit ought to be given to this evidence. It was necessary that reward should be offered, and the officer frankly stated that if he did his duty he expected a share of the reward. Now, this must always follow when rewards are offered.

With respect to the locket found in the prisoner's possession, it had no connection at all with the robbery. As to the handkerchiefs, it might be said that if the prisoner were the guilty party, he would never have placed them in his portmanteau, where they could not by possibility escape discovery.

On the morning of the sixth of May, fourteen articles of plate were missed. The same number of articles had been produced by Madame Pioline; and Ellis, Lord William Russell's former valet, stated that they corresponded with those missed in every respect. With regard to the evidence obtained after the prosecution had commenced, a few observations were necessary. On the 6th of May, as already stated, fourteen articles of plate were missed, and if the matter had been left in that state, the case might have been open to some conjecture favourable to the prisoner. The person who committed the robbery might have been disturbed, and it could have been said that he only succeeded in carrying off these fourteen articles: but these articles being afterwards found where the prisoner himself had left them, and when it turned out that they were not carried off by a stranger, this conjecture fell to the ground. The evidence respecting those articles was only legitimate for the purpose of doing away with this conjecture. They were not trying the prisoner for having robbed his master, and they could not mix up an act of stealing with the matter now before them. It had been observed, that the fact of finding the property was involved in mystery in consequence of the non-production of the French newspaper. But there was no doubt but the paper contained something which led to a suspicion of the contents of the parcel. The matter, however, was left in some degree of mystery; but the prisoner's counsel might have cross-examined the witness and asked where the paper was, and what the paragraph was, and had it produced, if there had been time to do so.

It had been suggested, that some of the articles were placed in the scullery and pantry for the same purpose that the gloves and handkerchiefs were put in the portmanteau. The jury would have to judge of the probability of this. Many of the articles, according to the prisoner's account, were in the room of the deceased on the night of the murder, and the jury would consider how any one could know where they were placed, and how any stranger, after taking them away, could think of putting them where they were found. This was important, and deserved careful consideration. A model of the premises had been produced, and the height of the walls round the yard was stated.

The prisoner produced several persons who had spoken to his previous good character, but with respect to evidence of character, it was only of a secondary nature. It was important, when a man who had earned the good opinion of his friends, was accused upon slight evidence, that his good character should be known, for it would then become highly impro-

bable that he would at once commit an act which might take from him the character he had so honestly earned, and a doubt was raised in his favour. But if the circumstances should be so strong on any occasion, though he (the learned judge) did not mean to say that they were so in this case, as to leave no reasonable doubt in the minds of a jury as to the guilt of the accused, character could not avail, and the facts only must be looked to. But it was fair to give an accused party the benefit of an improbability in the case. The prisoner might have had an honest character, but honesty had no bearing in a case like this; and if Mrs. Pioline was to be believed, the prisoner must have forfeited that character before the murder was committed.

Having read the evidence, he would now ask the jury to bestow their very best attention upon the whole matter before coming to a conclusion as to the guilt or innocence of the prisoner. After receiving such evidence as they considered trust-worthy, and rejecting such as appeared to them undeserving of credit, and weighing all the facts, they would draw such inference from those facts as they should deem just and fair. If, from the circumstances, they conceived that the prisoner must have been the guilty party, then they ought not to shrink from returning a verdict accordingly; but if, after bestowing their best attention on the matter, they thought it probable that another person committed the offence, they would acquit the prisoner.

It had been asked, what motive the prisoner could have had for committing the offence? It was impossible to assign the secret motive that might operate in any case, and a court of justice had only to judge of facts, and to reconcile those with the act committed. After carefully considering the whole matter, it was for the jury to say whether the prisoner was guilty or not guilty of the crime with which he was charged.

[The Jury found the prisoner *guilty*.]

ANNUAL REPORT OF THE INCORPORATED LAW SOCIETY.

At the annual general meeting of the members of the Society, held in the hall, Tuesday, June 30, 1840; *John Teesdale*, Esq. in the chair; the Report of the Committee of Management (of which the following are the principal parts) was read by the Secretary.

“Referring to the report of the auditors for a statement of the accounts of the society for the past year, the committee proceed to submit to the members a statement of the several matters which have engaged their attention since the last annual meeting.

Bills in Parliament.—Among the bills in parliament relating to the law, or affecting the interests of the profession, which have come under the consideration of the committee, they would mention in particular the Lord Chan-

cellor's bill, for the better administration of Justice in the Courts of Equity, principally by the appointment of two additional Vice Chancellors, and the abolition of the Exchequer. This bill they deem to be equally beneficial to the suitor and the profession, but they are of opinion that it ought to be followed by other measures, in order effectually to remove the delays in Chancery. The Committee have therefore, by a deputation from their body, communicated with a member of the upper House of Parliament, peculiarly conversant with the subject, and they have reason to believe that steps will be taken to provide a further remedy for the evil.

The bill brought in at the latter part of the last session, relating to the Court of Common Pleas, and the bills of this session for improving the Admiralty Court, and limiting the Costs of frivolous actions, have also received the attention of the committee, and they submitted some suggestions, regarding each, in the proper quarter.

Removal of the Courts.—The members of the society have been apprised by the circular, addressed to them on the 30th of April last, and by the proceedings which have followed, that the proposed removal of the Courts of Law and Equity from Palace Yard to the neighbourhood of the Inns of Court, has had the earnest attention of the committee for some time past. In consequence of a requisition, numerously signed by members of the society, the committee held several meetings on the subject; and finally, on the suggestion of Mr. Vizard, a general meeting of the members, and others of the profession, was held in this hall on the 8th of May, when resolutions were passed, strongly recommending the measure, and the adoption of active steps with a view to secure its accomplishment. A petition to the House of Lords, and a similar petition to the House of Commons, founded on these resolutions, were thereupon prepared, and soon received the signatures of above 1,500 attorneys and solicitors practising in the metropolis; and the Lord Chancellor having obligingly consented (on the request of the meeting) to present the former, and the Attorney General the latter, a deputation of the committee attended his Lordship and the Attorney General with the petitions, which they have since presented, stating at the time the number and respectability of the parties by whom the same had been signed. Similar petitions, on the part of the society, have received the corporate seal, and the Earl of Devon has most kindly agreed to present that to the House of Lords, and the Solicitor General that to the House of Commons.

Petitions are also in a course of progress from the different law societies in the country.*

A plan and elevation of a building for the Courts, assuming the site to be in Lincoln's

* The petitions of the Incorporated Law Society, and of many country law societies, have been since presented. See p. 263. *ante*.
Ed.

Inn Fields, have been prepared by Mr. Barry, and submitted to the judges and other authorities, and a copy is placed in the hall.

Malpractice.—The committee have considered several cases of complaint which have from time to time been brought before them of alleged malpractice, and they have taken such steps as appeared to them to be expedient. They regret to find a continuance of the evil of attorneys lending their names to unqualified persons, by establishing what may be called "branch offices" in places distant from their usual residence, and where they never attend (except, perhaps, on market days,) but where some industrious canvasser for professional business acts nominally as a clerk, being really a partner in the profits of this illegal system. The committee have given their anxious attention to several cases of this description, and taken such measures in them as they deemed advisable.

On the case mentioned last year as remaining for decision, the master made his report in Hilary Term, but before the usual application on that report could be heard the attorney died, whereupon the rule against the unqualified person was discharged without costs, his counsel pressing for them, but the Court refusing—saying, "We have no doubt the conduct of the party was such as made it quite proper to bring this case before the Court, deserving, as he appears to have done, the heavy censure of the Master."

Re-admissions.—The committee having also particularly watched the applications for re-admission, and considered the circumstances of the several cases, have directed the re-admission of two persons to be opposed: the one on the ground of embezzlement, and the other of a conviction for a conspiracy relating to a fraudulent bankruptcy. The former of these applications for re-admission was, in consequence, rejected, and the latter abandoned.

Several cases have come before the committee of alleged fraudulent or colourable service of clerkship, which have been duly investigated.

Law of Attorneys.—The defective state of the law, in regard to the prevention of several of the grievances or offences above referred to, has induced the committee to urge the completion of the proposed bill for consolidating and amending the law of attorneys, but various unavoidable causes and circumstances over which the committee have no controul, have concurred to prevent its introduction into parliament during the present session.

Improvements in practice, &c.—The committee have had under consideration various suggestions for improving the practice of the Courts,—for removing professional grievances,—and for facilitating the discharge of professional duty, and they have adopted such measures relative thereto as appeared to them to be necessary.

Professional usages.—They have also considered several cases submitted to them regarding the usage of the profession in con-

veyancing matters, and the result has been registered in the book kept for that purpose in the secretary's office. The committee are gratified in learning that this part of their labours has in many instances proved very useful to the members of this society.

The committee have had under their consideration several matters relating to the *bar*, particularly the retainers of counsel, (including those of counsel practising in the Court of Chancery, and the circumstances under which they have recently been held to be abandoned or forfeited,) and the obtaining a separate bar of leading counsel for each Court, in order to prevent the injury and inconvenience which too frequently occur from the absence of counsel in another court during the disposal of causes in which they hold briefs. These, and other points affecting the respective duties of the two branches of the profession, have received the anxious attention of the committee; and feeling it to be extremely material to the suitor as well as to the practitioner, that remedies should be found for the evils referred to, they will on the one hand persevere in their endeavours to accomplish whatever may be thought likely to be most efficacious in the several cases; while on the other, they will, as hitherto, studiously avoid any step calculated to endanger unnecessarily that perfectly good understanding with the *bar*, which is so very essential to the interests of the suitors.

Counsel's Clerks.—The question concerning the *gratuities to counsels' clerks* has not yet been settled, so far as regards the Courts of Equity. The deputation of the committee which waited on the Vice Chancellor last year, obtained his Honor's approval of a scale, prepared in conformity with the practice as now established, with reference to the Common Law Courts; and the same having been submitted to the Master of the Rolls, his Lordship expressed his sanction of it, and transmitted the papers to the Lord Chancellor, whose decision is now speedily expected.

Liability of Attorneys to serve on Inquests.—Several members of the society having been summoned by one of the Coroners for Middlesex to serve as *jurymen on inquests* before him, and it being obvious that if their liability were established, it would interfere with the discharge of their professional duties, the committee laid a case before the Attorney and Solicitor General as to such liability, and the proper mode of procuring a decision upon it, and they gave an unqualified opinion "that attorneys and solicitors of the Superior Courts are not liable to serve on coroners' inquests, and that the best mode of trying the question would be, for an attorney summoned on a coroner's inquest to attend and claim his privilege, and if he should be fined by the coroner, to contest the validity of the fine in the Court of Exchequer." The committee have only to add on this point, that the coroner referred to is understood to have since acquiesced in the exemption, and given orders that further summonses be not served by the officers under his controul.

Solicitors' Rooms at Guildhall.—For the convenience of the profession, and to enable its members the better to discharge their duties, the committee have considered it very desirable to obtain the use of rooms for solicitors adjoining the several Courts of Justice. The measures adopted, with respect to Westminster Hall, were stated in the report of last year. The committee have since had a favourable opportunity of applying to the Lord Mayor, Aldermen, and Common Council of the city of London, for similar accommodation at Guildhall, and the application was favourably received.

Country Law Societies.—The committee have continued their communications with the *Provincial Law Societies*, and finding that the interests of the profession, and a good understanding among its members, are thereby promoted, they repeat their recommendation to those members who have the opportunity, to encourage the formation of these useful societies in all populous districts where they are not already established.

Property Purchased.—The committee have not yet obtained possession of the *property purchased* for the society adjoining the north side of the hall, in consequence of the difficulty of the tenant's finding another house to which the license may be transferred. In the meantime the society are in the receipt of the rent of the premises.

Lectures.—The lectures on the different branches of the law have been continued as usual, and the number of subscribers last season has equalled the average of former years. The committee have it in contemplation to alter the time of delivering the lectures, in order that the benefit of them may be more fully enjoyed by students intending to apply for admission in the spring; and the lectures will, therefore, probably in future commence in the latter part of October, and terminate early in March.

Examinations.—The examinations have proceeded as usual, and the total number examined in the four terms was 487.

Library.—The library continues to increase, not only from the purchases made by the committee out of the society's funds, but from the liberal donations of the authors of valuable works: and the committee are gratified in being able to state that Lord Brougham and Lord Denman have signified their willingness to assist in the completion of the Parliamentary department, by any duplicate publications in the possession of their Lordships, or which they may be able to obtain for the society. A catalogue of the library is in a very forward state, and the committee hope soon to have it printed.

The committee have deemed it desirable to print an *abridged prospectus* of the objects of the society, in order that the friends of members, who do not already belong to it, may have an opportunity of readily seeing its nature.

The committee have approved of 62 members since the last annual meeting; and 57 of them having already qualified themselves by taking shares, they have been admitted, and the society now consists of 1162 members."

The following resolutions were passed at the annual general meeting.

"1. Resolved, That the report of the committee of management be received and entered on the minutes, and that such parts thereof as the committee of management think fit, be printed and circulated among the members.

2. Read the auditors' report of the accounts of the society from the 31st December, 1838, to 31st December, 1839.

Resolved, that the auditors' report be approved and signed by the chairman.

3. Resolved, that the thanks of the meeting be presented to the *Chairman*, for his conduct in the chair this day; and to him and the *Committee of Management* for their great attention to the interests of the profession, and for their excellent management of the affairs of the society during the past year.

4. Resolved that the thanks of the meeting be given to the *Secretary*, for his able discharge of the duties of his office, and the uniform attention shewn by him to the members of the society, and all who have occasion to communicate with him."

(Signed)

John Teesdale, Chairman.

MASTERS EXTRAORDINARY IN CHANCERY.

From 21st July to 21st August, 1840, both inclusive, with dates when gazetted.

Darwell, Thomas, Manchester. July 28.

Haigh, Thomas, Horbury Bridge, Wakefield, York. July 24.

Jabet, George, Birmingham. July 21.

Jones, Daniel Price, Newcastle Emllyn, Carmarthen. Aug. 11.

Lavers, William, jun., Plymouth. July 24.

Shephard, Mark, Stratton, Cornwall. Aug. 11.

Standbridge, Thomas, Edgbaston, Warwick. Aug. 2

Taddy, Charles, Bristol. July 24.

Watson, Henry, Sheffield, York. July 21.

Wight, Thomas, jun. Kingwinford, Stafford. Aug. 18.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st July to 21st August, 1840, both inclusive, with dates when gazetted.

Ashurst, W. H., and E. B. E. Gainsford, Cheap-side, London, Attorneys and Solicitors. Aug. 4.

Barney, John, and William Henry Moberly, Southampton, Attorneys and Solicitors. Aug. 14.

Edwards, Richard Griffin, and Thomas Wormald, Great James Street, Bedford Row, Attorneys and Solicitors. Aug. 21.

Lowe, William, and Thomas Craddock, Marston, Birmingham, Attorneys, Solicitors, and Conveyancers. Aug. 18.

Scudamore, Frederick, Maidstone, Kent. Aug. 11.

Swan, Robert, and Charles Martin, Serjeant's Inn, Fleet Street, Attorneys and Solicitors. Aug. 4.

Taylor, John Sparrow, and Legh Serle Richmond, Shelton, Staffordshire, Attorneys and Solicitors. Aug. 14.

Yarker, Robert Francis, and John Postlethwaite, jun., Ulverston, Lancaster, Attorneys and Solicitors. July 24.

BANKRUPTCIES SUPERSEDED.

From 21st July to 21st August, 1840, both inclusive, with dates when gazetted.

Austin, Joseph Pomfrey, and Thomas Wescott, Bristol, Paper Manufacturers. Aug. 11.
Askham, James, Sheffield, York, Brewer. Aug. 14.
Atkinson, Thomas, Northwich, Chester, Salt Manufacturer. Aug. 21.
Baker, Isaiah, Ettingshall, Sedgley, Stafford, Screw Forger. Aug. 1.
Curwen, John, Great Eastcheap, London, Tea Broker. Aug. 4.
Furley, Thomas, Upper Clapton, Middlesex, Grocer and Cheesemonger. Aug. 11.
Perry, Charles, Billiter Street, Leadenhall Street, London, Dealer in Watches and Commission Agent. July 28.

BANKRUPTS.

From 21st July to 21st August, 1840, both inclusive, with dates when gazetted.

Andrews, Thomas, Wednesbury, Stafford, Builder. *Whitehouse*, Quality Court, Chancery Lane; *Rowlston*, Birmingham. Aug. 4.
Adrian, Adolph, Bedford Square East, Commercial Road, Middlesex, and of London Wall, London, Merchant. *Whitmore*, Off. Ass.; *Adlington & Co.*, Bedford Row. Aug. 11.
Ash, James, Taunton, Somerset, Bookseller. *Birkitt & Co.*, Cloak Lane; *Hancock*, Taunton. Aug. 21.
Brine, Robert, Hart Street, Crutched Friars, London, Wine Merchant. *Cannan*, Off. Ass.; *Barker & Co.*, Mark Lane. July 21.
Burrill, William Routh, Kingston-upon-Hull, Merchant and Warehouseman. Messrs. *Wells*, Kingston-upon-Hull; *Tison & Co.*, Coleman Street. July 21.
Blew, Frederick, late of Castletown, Monmouth, but now of the city of Bristol, Innkeeper. *Crosby*, Bristol; *Bicknell & Co.*, Lincoln's Inn Fields. July 21.
Barrett, William, Newcastle Place, Edgware Road, Plumber and Glazier. *Clark*, Off. Ass.; *Pontifes & Co.*, St. Andrew's Court, Holborn. July 24.
Booth, William Ward, Hanley, Stoke-upon-Trent, Stafford, Colour Manufacturer. *Harding*, Burslem; *Smith*, Chancery Lane. July 24.
Buckland, William, Bremilham, Wilts, Tanner. *Chubb*, Malmesbury; *Lambert*, Raymond Buildings, Gray's Inn. July 24.
Beeston, Robert Fverall, Liverpool, Marble Mason. *Mallaby*, Liverpool; *Chester*, Staple Inn. July 24.
Butterworth, Benjamin, Liverpool, Mercer and Draper. *Sale & Co.*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. July 28.
Baker, John, Woodlands, Blagdon, Somerset, Scrivener. *Osborne & Co.*, Bristol; *Meredith & Co.*, Lincoln's Inn. July 28.
Baker, John, Taunton, Somerset, Tea Dealer and Grocer. *Clarke & Co.*, Lincoln's Inn Fields; *Hancock*, Taunton. July 28.
Browning, Arthur, and William Smelt, jun., Manchester, Merchants and Commission Agents. *Hill & Co.*, New London Street; *Hopps*, Leeds; *Upton*, Manchester. Aug. 4.
Bentley, Edward, Manchester, Tea Dealer. *Vincent & Co.*, Temple; *Booth*, Liverpool. Aug. 4.
Butterworth, Robert, Bank Hey, Rochdale, Lancaster, Woollen Manufacturer. *Norris & Co.*, Bartlett's Buildings; *Heaton*, Rochdale. Aug. 14.
Boaner, James, Thame, Oxford, Upholsterer and Builder. *Holloway*, Thame. Aug. 14.

Barry, Timothy Jenks, Mortimer Street, Middlesex, Upholsterer. *Turquand*, Off. Ass.; *Tahourdin*, Bedford Street, Bedford Square. Aug. 18.

Burrell, George Henry, King's Lynn, Norfolk, Cordwainer. *Foster & Co.*, Norwich; *Taylor & Co.*, Bedford Row. Aug. 18.

Blake, Edward, Devonport, Draper. *Hooker*, Bartlett's Buildings; *Sole*, Devonport. Aug. 21.

Butler, Robert, Chester, Cabinet Maker and Upholsterer, and of Whitchurch, Salop, Waiter. *Newbon & Co.*, Wardrobe Place, Doctors' Commons; *Roberts*, Chester. Aug. 21.

Clark, Charles Samuel, Rosemary Lane, Victualler. *Whitmore*, Off. Ass.; *Wood & Co.*, Corbet Court, Gracechurch Street. July 24.

Carruthers, Frederick Fraser, Manchester, Distiller. *Graham*, Off. Ass.; *Bartlett & Co.*, [no residence gazetted.] July 24.

Coley, Richard, Gloucester, Scrivener. *White & Co.*, Bedford Row; *Washbourn*, Gloucester. July 24.

Colcock, William, James Street, Covent Garden, Grocer. *Cannan*, Off. Ass.; *Amory & Co.*, Throgmorton Street. July 28.

Cross, Benjamin Billing, New Woodstock, Oxford, Glover. *Heldr*, Clement's Inn. Aug. 4.

Clarke, Thomas William, Wakefield, York, Corn Factor. *Adlington & Co.*, Bedford Row; *Taylor & Co.*, Wakefield. Aug. 7.

Carroll, William, Suffolk Street, Pall Mall East, Wine Merchant. *Clark*, Off. Ass.; *Orchard*, Hatton Garden. Aug. 11.

Christie, Alexander, East Cheap, London, Spirit Merchant. *Whitmore*, Off. Ass.; *Herley*, Bridge Street, Blackfriars. Aug. 14.

Comer, William, Nantwich, Chester, Ironmonger. *Hidditch*, Calthorpe Street, Gray's Inn Road; *M'Clure*, Nantwich. Aug. 18.

Ditchfield, Peter, Hindley, Lancaster, Cotton Spinner. *Gaskell*, Wigan; *Adlington & Co.*, Bedford Row. July 28.

Edwards, James, of the city of Bristol, and of Newport, Monmouth, Corn and Provision Merchant. *White & Co.*, Bedford Row; Messrs. *Bryan*, Bristol. July 21.

Eastment, Samuel, Bradford, Wilts, Farmer. *Frampton*, South Square, Gray's Inn; *Miller*, Frome Selwood. Aug. 4.

Ellis, Richard, Manchester, Laceman and Hosier. *Walmesley & Co.*, Chancery Lane; *Dicken*, Manchester. Aug. 4.

Enoch, John, Warwick, Boot and Shoe Manufacturer. *Newton & Co.*, South Square, Gray's Inn; *Heath*, Warwick. Aug. 7.

Edwards, Thomas Wilkinson, Liverpool, Coal Merchant. *Neville & Co.*, Blackburn; *Brown & Co.*, Mincing Lane, London. Aug. 18.

Furley, Thomas, Upper Clapton, Middlesex, Grocer and Cheesemonger. *Turquand*, Off. Ass.; *Neat*, Tokenhouse Yard. July 21.

Field, George, Beaumont Street, Marylebone, Coach Maker. *Turquand*, Off. Ass.; *Goren*, South Molton Street. Aug. 4.

Forsell, John, Leicester, Hosier. *Broughton*, Falcon Square; *Briggs*, Leicester. Aug. 11.

Farrell, William, Kensington, and of the Cattle Market, West Derby, Lancaster, Cattle Salesman. *Adlington & Co.*, Bedford Row; *Frodsham*, Liverpool. Aug. 14.

Fittock, George, Devonport, Devon, Tea Dealer and Grocer. *Surr*, Lombard Street; *Lochtyer & Co.*, Plymouth. Aug. 18.

Foster, Edward, Sheffield, York, Grocer and Tallow Chandler. *Murray*, London Street, Fenchurch Street; *Badger*, Sheffield. Aug. 21.

Gerard, Julius, Fenchurch Street, London, Mer-

- chant. *Whitmore*, Off. Ass.; *Adlington & Co.*, Bedford Row. July 28.
- Gibbons, John Drew, Ledbury, Hereford, Mercer. *Clarke & Co.*, Lincoln's Inn Fields; *Reece*, Ledbury. July 31.
- Green, John, late of Bartlett's Buildings, London, and of Sloane Square, Middlesex, Printer. *Turgand*, Off. Ass.; *Taylor*, Farnival's Inn. Aug. 11.
- Grace, Charles Joseph, and Edward Grace, Cross Lane, St. Mary-at-Hill, London, Coal Factors. *Cannan*, Off. Ass.; *Compton*, Church Court, Old Jewry. Aug. 14.
- Gill, Thomas, and William Wheelwright, Leeds, York, Dyers. *Lambert*, Raymond Buildings; *Snowdon & Co.*, Leeds. Aug. 11.
- Howarth, David, sen., David Howarth, jun., and Robert Howarth, Rochdale, Lancaster, Ironfounders. *Adlington & Co.*, Bedford Row; *Hampson*, Manchester. July 21.
- Hobson, Leonard Jasper, Leeds, York, Cloth Merchant. *Wilson*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. July 31.
- Hudson, Thomas Saint John, Wells, Surgeon. *Frampton*, South Square, Gray's Inn; *Miller*, Frome Selwood. Aug. 7.
- Hiles, John, Shrewsbury, Salop, Music Seller. *Clarke & Co.*, Lincoln's Inn Fields; *Tece*, Shrewsbury. Aug. 7.
- Heaton, Thomas, Kingston-upon-Hull, Grocer. *Rosser & Co.*, Warwick Court, Holborn; *England & Co.*, Hull. Aug. 11.
- Harper, Burn, Bishop Wearmouth, Durham, Butcher and Cattle Dealer. *Nicholls & Co.*, Cook's Court, Lincoln's Inn; *Thompson*, Durham. Aug. 14.
- Hawes, John, Stoke Ferry, Norfolk, Brewer. *Micklefield*, Stoke Ferry; *Flower*, Cheapside. Aug. 18.
- Hepworth, Henry, Leeds, York, Cloth Manufacturer. *Wiglenworth & Co.*, Gray's Inn Square; *Messrs. Richardson & Co.*, Leeds. Aug. 18.
- Hewer, Francis, Hereford, Innkeeper. *Messrs. Bodenham*, Hereford; *Simpson & Co.*, Farnival's Inn. Aug. 18.
- Hingley, Noah, Cradley, Worcester, and of Liverpool, Chain, Trace, and Cable Manufacturer. *Clover & Co.*, Temple; *Collis*, Stourbridge. Aug. 21.
- Isaacs, Isaac, Chatham, Kent, Army Clothier and Outfitter. *Cannan*, Off. Ass.; *Spyer*, Broad Street Buildings. July 21.
- Iregent, Patrick, jun., Birmingham, Stationer. *Stafford*, Buckingham Street, Strand. July 24.
- Ineson, Benjamin, Batley, York, Cloth Manufacturer. *Walker*, Farnival's Inn; *Blackburn*, Leeds. July 24.
- James, Walter, Beesmfut Iron-Works, Llangattock, Brecon, General Shopkeeper. *Leman*, Bristol; *Blower & Co.*, Lincoln's Inn Fields. July 21.
- Johnson, Thomas, Love Lane, London, and of Margaret Place, Forrest Row, Dalston, Middlesex, Manchester Warehouseman. *Graham*, Off. Ass.; *Steele*, Hatton Garden. July 24.
- Jones, James, College House, Llanfnes, Brecon, Maltster. *Blower & Co.*, Lincoln's Inn Fields; *Nash*, Bristol. July 24.
- Jones, Peter, Birmingham, Boot and Shoe Maker. *Vincent*, & Co., Temple. *Hodson*, Birmingham. August 4.
- Jones, William, Carnarvon, Carrier. *Taylor*, Farnival's Inn; *Williams*, Carnarvon. Aug. 4.
- Johnson, William, Birmingham, Victualler and Tarpanlin Maker. *Thorncliffe*, Staple Inn; *Powell*, Birmingham. August 18.
- Jackson, John, Bury, Lancaster, Grocer and Dealer in Provisions. *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Bury. August 18.
- Lightfoot, James, and Joseph Jaques, Asskrig, York, Malsters, Brewers and Spirit Merchants. *Topham*, Middleham, York. *Matthews & Co.*, London Street, Southwark. July 24.
- Lisle, Thomas, Crawthorne, Barnsley, York, Linen Manufacturer and Farmer. *Scholes*, Dewsbury; *Battye & Co.*, Chancery Lane. July 31.
- Lea, Edward, Birmingham, Coal Merchant. *Wilson*, Southampton Street, Bloomsbury; *Tarleton*, Birmingham. August 4.
- Lowe, Robert, Preston and Blackpool, Lancaster, Working Jeweller, Silversmith and Watch Maker. *Mayhew & Co.*, Carey Street, Lincoln's Inn; *Noble*, Preston; *Blackhurst & Co.*, Preston. August 7.
- Lowndes, Thomas, and Samuel Ingram Hill, Stoke upon Trent, Earthenware Manufacturers. *Young*, Longton; *Gough*, London. Aug. 14.
- Lambell, Richard, Maidenhead, Berks, Sadler. *Johnson*, Off. Ass.; *Smith*, Serle Street, Lincoln's Inn. August 18.
- Lawton, William, Rumworth, Lancaster, Ironfounder. *Adlington & Co.*, Bedford Row; *Rush-ton & Co.*, Bolton-le-Moors. August 18.
- Morgan, George, Birmingham, Glass Cutter. *Austen & Co.*, Raymond Buildings, Gray's Inn; *Reece*, or *Stubbs & Co.*, Birmingham. July 24.
- Munroe, William, junr., and Thomas Munroe, Milk Street, London, Merchants. *Turgand*, Off. Ass.; *Van Sandau & Co.*, Old Jewry. August 14.
- Masser, Thomas, Kensington, near Liverpool, Brewer. *Adlington & Co.*, Bedford Row, *Crump & Co.*, Liverpool. August 14.
- Monday, William, Nun Court, Aldermanbury, London, Factor. *Cannan*, Off. Ass.; *Freeman & Co.*, Coleman Street. August 18.
- Nicholson, Elizabeth, New Bond Street, Dress Maker and Milliner. *Whitmore*, Off. Ass.; *Hoffman*, Clifford's Inn. Aug. 4.
- Pain, Charles, Liverpool, Hat Manufacturer. *Neal*, Liverpool; *Bishop & Co.*, Verulam Buildings, Gray's Inn. July 28.
- Playfair, Peter, Warwick, Innkeeper. *Ford*, Bloomsbury Square; *Frankum*, Abingdon, Berks; *Orton*, Warwick. July 28.
- Popham, Humphrey, Exeter, Baker. *Bicknell & Co.*, Lincoln's Inn Fields; *Geare & Co.*, Exeter. July 28.
- Pickard, Thomas, Chesterfield, Derby, Builder. *Lucas & Co.*, Chesterfield; *Spence & Co.*, Alfred Place, Bedford Square. Aug. 4.
- Procter, John, and Hamlet Appleby, Longport, Burslem, Stafford, Brewers. *Ward*, Burslem; *Wolston*, Farnival's Inn. Aug. 4.
- Poulter, Charles, Long Melford, Suffolk, Victualler. *Cutts*, Witham; *Brookbank & Co.*, Gray's Inn Square. Aug. 7.
- Petch, Edward, Atherstone, Warwick, Wine and Spirit Merchant. *Cannan*, Off. Ass.; *Buch*, Mincing Lane Tower Street. Aug. 11.
- Price, Thomas, Brecon, Carrier. *Bicknell & Co.*, Lincoln's Inn Fields. *Vaughan & Co.*, Brecon. Aug. 11.
- Preston, Frederick, Southtown, otherwise Little Yarmouth, Suffolk, Ship Builder. *Cory*, Great Yarmouth; *Hawkins & Co.*, New Boswell Court. Aug. 11.
- Quickfall, Samuel, Newcastle-upon-Tyne, Draper. *Bell & Co.*, Bow Church Yard. *Messrs. Charter*, Newcastle-upon-Tyne. Aug. 21.
- Robinson, William, Kirton-in-Lindsey, Lincoln,

- Scrivener. *Dyneley & Co.*, Gray's Inn. *Rhodes*, Market Rasen. July 21.
- Rowell, Edward, Manchester, Worsteds and Cotton Manufacturer. *Hailfield*, Manchester; *Johnson & Co.*, Temple. July 31.
- Russell, Joshua, Manchester, Merchant and Muslin Manufacturer. *Hailfield*, Manchester; *Johnson & Co.*, Temple. Aug. 4.
- Reis, Louis, Barge Yard, Bucklersbury, London, Merchant. *Whitmore*, Off. Ass.; *Adlington & Co.*, Bedford Row. Aug. 11.
- Rogers, Thomas, Salisbury, Innkeeper. *Hodding & Co.*, Salisbury; *Smith & Co.*, Gray's Inn Place. Aug. 14.
- Shepard, John, junr., Southampton, Painter, Plumber, and Glazier. *Plucknett & Co.*, Lincoln's Inn Fields; *Mackey*, Southampton. Aug. 24.
- Spark, William, Exeter, Bookbinder, Printer Bookseller and Stationer. *Clowes & Co.*, King's Bench Walk; *Laidman*, Exeter. July 28.
- Shaw, Richard, William, Birmingham, Button Maker. *Teimey*, Chancery Lane. *Wright*, Birmingham. July 28.
- Spooner, John, Richmond, Surrey, Cheesemonger. *Graham*, Off. Ass.; *Burkitt*, Currier's Hall, London Wall. July 31.
- Shepard, John, sen., and John Shepard, junr., Southampton, Painters, Plumbers, and Glaziers. *Plucknett & Co.*, Lincoln's Inn Fields; *Mackey*, Southampton. July 31.
- Steer, James, Maidstone, Kent, Tallow Chandler and Fruiterer. *Cannan*, Off. Ass.; *Harman*, Earle Street, Blackfriars. Aug. 7.
- Stanley, Thomas, and William Watson, Leeds, York, Cloth Merchants. *Walker*, Furnival's Inn; *Blackburn*, Leeds. Aug. 7.
- Sykes, John, Leeds, York, Music Seller. *Mackinson & Co.*, Staple Inn; *Foden*, Leeds. Aug. 7.
- Sutton, Edward, Manchester, Bricklayer and Builder. *Walker & Co.*, Staple Inn; *Harding*, Manchester. Aug. 7.
- Simpson, William James, Reading, Berks, Brick Maker. *Batty & Co.*, Chancery Lane; *Wheatley*, Reading. Aug. 14.
- Swift, William, Ashton-under-Lyne, Lancaster, Timber Merchant. *Fur*, Finsbury Circus; *Earle*, Ashton-under-Lyne. Aug. 18.
- Stead, William, Boroughbridge, York, Corn Miller, Seed Crusher and Merchant. *Douglas & Co.*, Verulam Buildings, Gray's Inn; *Holmes*, Boroughbridge. Aug. 21.
- Shute, Henry, and William Shute, Leeds, York, Cabinet Makers. *Battye & Co.*, Chancery Lane; *Holden*, Furnival's Inn; *Naylor*, Leeds; *Blackburn*, Leeds. Aug. 21.
- Somerville, John, and John Eadie, Liverpool, Wine and Spirit Merchants. *Johnson & Co.*, Temple; *Blair*, Manchester. Aug. 21.
- Thomas, Edward, Aldermanbury, London, Tailor. *Whitmore*, Off. Ass.; *Evans*, Lincoln's Inn Fields. July 21.
- Toole, Richard, Sheffield, York, Victualler. *Atkinson & Co.*, Church Court, Lothbury; *Smith & Co.*, Sheffield. July 31.
- Tillot, Eugene Teobale, Trinity Chambers, Water Lane, Tower Street, London, Merchant. *Graham*, Off. Ass.; *Ashurst*, Cheapside. Aug. 4.
- Turner, Frederick Edward, Holywell, Flint, Chemist and Druggist. *Bartrum & Co.*, Old Broad Street; *Oldfield*, Bodhyfryd, near Abergely. Aug. 14.
- Ulyatt, Jeremiah, Crawland, Lincoln, Cattle Dealer. *Carter & Co.*, Spalding; *Willis & Co.*, Tokenhouse Yard. July 24.
- Vanderplank, Bartholomew, and Samuel Vanderplank, Saville Row, Burlington Gardens, Woollen Drapers. *Turquand*, Off. Ass.; *Fane Sandau*, Old Jewry. Aug. 14.
- Wood, James, Leeds, Saddleworth, York, Merchant and Woollen Manufacturer. *Milne & Co.*, Temple; *Whitehead & Co.*, Oldham. July 24.
- Whalley, Joseph, and Benjamin Whalley, Leeds, York, Wool Merchants. *Fidley*, Sergeant's Inn, Fleet Street; *Lambert*, Raymond Buildings; *Barr & Co.*, Leeds; *Snowdon & Co.*, Leeds. July 28.
- Wood, Thomas, Leeds, York, Cloth Manufacturer and Cloth Merchant. *Naylor*, Leeds; *Battye & Co.*, Chancery Lane. Aug. 4.
- Woods, Edward, Liverpool, Victualler. *Evans*, Liverpool; *Oliver*, Old Jewry. Aug. 4.
- Watts, Thomas, Manchester, Victualler and Tavern Keeper. *Adlington & Co.*, Bedford Row; *Chew*, Manchester. Aug. 4.
- Winterbottom, John Kenyon, Heaton Norris, Lancaster, Banker and Money Scrivener. *Milne & Co.*, Temple; *Slater & Co.*, Manchester. Aug. 4.
- Wright, Thomas, Newcastle-upon-Tyne, Ship Broker and Fitter. *Swain & Co.*, Frederick's Place, Old Jewry; *Gibson*, Newcastle-upon-Tyne. Aug. 4.
- Wilkinson, William, Bolton-le-Moors, Lancaster, Ironmonger. *Chilton & Co.*, Chancery Lane; *Houlton*, Bolton. Aug. 11.
- Wood, Samuel, jun., Bagillt, Flint, Chert-Merchant. *Wolston*, Furnival's Inn; *Oldfield*, Bodhyfryd, near Abergely. Aug. 14.
- Whittel, Benjamin, Broad Royd, Stainland, Halifax, York, Woollen and Fancy Cloth Manufacturer. *Lake & Co.*, Basinghall Street; *Battye & Co.*, Huddersfield. Aug. 14.
- Walton, James, Great Bridge, Stafford, Iron Founder and Iron Merchant. *Chaplin*, Gray's Inn Square; *Motteram*, Birmingham. Aug. 14.
- Wilkinson, John, Leeds, York, Grocer. *Wilson*, Southampton Street, Bloomsbury; *Wiglerworth & Co.*, Gray's Inn Square; *James & Co.*, Leeds; *Payne & Co.*, Leeds. Aug. 18.
- Wyer, Horatio, Newington Causeway, Surrey, Tailor and Draper. *Turquand*, Off. Ass.; *Dickson & Co.*, Frederick's Place, Old Jewry. Aug. 21.
- Warner, James, Bedford, Linen Draper. *Gibson*, Off. Ass.; *Jones & Co.*, Size Lane. Aug. 21.
- Wright, Benjamin, Liverpool, Dealer in Paint. *Dean*, Essex Street, Strand; *Houghton*, Liverpool. Aug. 21.

PRICES OF STOCKS, Tuesday, Aug. 25, 1840.

Bank Stock, div. 7 per Cent.	- - -	169	a	8½	a	9½
3 per Cent. Reduced	- - - - -	90½	a	½	a	1
3 per Cent. Consols Annuities	- - -	90½	a	½	a	½
3½ per Cent. Reduced Annuities	- 99½	a	½	a	a	½
New 3½ per Cent. Annuities	- 98½	a	½	a	a	9
Long Annuities expire 5th Jan. 1860	- - -	13½	a	½	a	½
Anns. for 30 yrs. exp. 10th Oct. 1859	- 13½	a	½	a	a	½
Ditto do. do. 5th Jan. 1860	- - -	13½	a	½	a	½
India Stock, div. 10½ per Cent.	- - - - -	284½	a	½	a	½
Ditto Bonds, 3 per Cent.	- - - - -	par	a	2s.	a	dis.
3 per Cent. Cons. for Acct. 27 Aug. 90½	a	½	a	½	a	½
Exchequer Bills—						
1000l. at 2½d. 24s. a 22s. a 26s. a 24s. a 26s. pm.						
500l. at 2½d. 24s. a 22s. a 26s. a 24s. a 26s. pm.						
Small at 2½d. 24s. a 22s. a 26s. a 24s. a 26s. pm.						

The Legal Observer.

SATURDAY, SEPTEMBER 5, 1840.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF JOINT-STOCK COMPANIES. No. VII.

ON OBTAINING LETTERS PATENT.

IN some joint-stock companies the obtaining an act of parliament is an indispensable requisite, such, for instance, as a railway company, which cannot carry out the objects proposed by the company without the compulsory powers usually inserted in an act for forming a company of this nature. Other companies, as insurance societies, frequently content themselves with an act enabling the company to sue and be sued, which is in general very easily obtained; but there is a large class of companies which desire more than this—that the liability of the shareholders should be limited. These are usually companies in which the nature of the business to be transacted involves considerable risk; and it is as to this subject that we shall collect some information in the present article. The most ready way of gaining the proposed object is to obtain letters patent. The granting them is regulated by two acts of parliament expressly relating to this subject. The first of these is the statute 4 & 5 W. 4, c. 94, which authorized the king to grant letters patent to trading companies not incorporated, the privilege of suing and being sued in the name of one or more of their principal officers of any such association; but by s. 3 it was enacted that decrees and judgments given against the company should extend to the property of the company, and the effects of every member thereof. By the 7 W. 4, and

1 Vict. c. 73, this act was repealed, and it is enacted, by s. 2, that it shall be lawful for her Majesty, by letters patent to be from time to time for that purpose issued under the Great Seal, to grant to any company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators and assigns of any such persons, although not incorporated by such letters patent, any privilege or privileges which, according to the rules of the common law, it would be competent to her Majesty, her heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation. By s. 3 it is enacted that, in any such letters patent so to be granted as aforesaid by her Majesty, her heirs or successors, to any such company, it shall be lawful, in and by such letters patent, either expressly or by a general or special reference to this act, to declare that all suits and proceedings, whether at law, in equity, or in bankruptcy or sequestration, or otherwise howsoever, as well in Great Britain and Ireland as in the colonies and dependencies thereof, by or on behalf of such company or body, or any person or persons as trustee or trustees for such company or body, against any person or persons, whether bodies politic or others, and whether members or not of such company or body, shall be commenced and prosecuted in the name of one of the two officers for the time being to be appointed to sue and be sued on behalf of such company or body, and registered in pursuance of the directions for such appointment and registration respectively thereafter (schedule A.) contained; and that

all suits and proceedings, whether at law or in equity, by or on behalf of any person or persons, whether bodies politic or others, and whether or not members of such company or body, against such company or body, shall be commenced and prosecuted against one of such officers, or, if there shall be no such officer for the time being, then against any member of such company or body; provided nevertheless, that nothing in this act or in such letters patent contained or to be contained, shall prevent the plaintiff from joining any member of such company or body with such officer as a defendant in equity, for the purpose of discovery, or in case of fraud. And by s. 4 it is enacted, that it shall be lawful by such letters patent to declare and provide that the members of such company shall be individually liable in their persons and property for the debts and liabilities of the company, to such extent only per share as shall be declared and limited in and by such letters patent; and the members of such company shall accordingly be individually liable for such debts and liabilities to such extent only per share as in such letters patent shall be declared. But before the letters patent can be granted, a deed or agreement of partnership must be entered into; the undertakings by such deed or agreement must be divided into a certain number of shares; in such deed the name of the company must be given, with the date of its commencement, the business for which the company is formed, the place of carrying it on; and there shall also be contained in such deed the appointment of two or more officers to sue or be sued (s. 5): and having given the advantages contained in the letters patent, the legislature insists on having the fullest information as to the names of the members of the company, and all the particulars relating to it must be registered (ss. 6 & 7). Where persons cease to be members of the company, except by transfer or change of name of members, the company is to make a return within three months (s. 8); and on transfer of shares notice is to be given to the company by the transferee (s. 9); and other provisions are made having a similar object.

We believe that comparatively few letters patent have as yet been granted under this

act. The applications under it must be made to the Board of Trade, and the nature of the applications which will be entertained will be found in a return to Parliament, made last session, (1840, No. 449) which it may be convenient here to give. It is a copy of a minute.

Copy of the Minute of the Lords of the Committee of Privy Council for Trade, dated 4th November 1834, on granting Letters Patent.

At the Council Chamber, Whitehall, the 4th November 1834.

By the Right Honourable the Lords of the Committee of Council appointed for the consideration of all matters relating to Trade and Foreign Plantations.

Read again order (No. 2526) of the Lords of the Council, dated 9th ultimo, referring a petition of J. Wigham, junior, and others, directors of the Scottish Porter and Ale Brewery Company, praying that his Majesty may be pleased to grant unto the said company letters patent conferring certain privileges thereupon.

My Lords are of opinion, that although the act referred to in the memorial undoubtedly confers upon the Crown the power of granting limited privileges to public associations applying for them, and specifically points to that of suing and being sued by their secretary, as one desirable, not only for the benefit of such associations, but of the public with whom they deal, it is necessary to take care that such powers are not conferred indiscriminately, and that so long at least as the present laws of partnership remain unchanged, facilities should not be afforded to joint stock partnerships which may interfere with private enterprise carried on under those laws, unless the circumstances and objects of such joint stock companies are of a nature fully to justify such interference, upon the ground of general public advantage.

The principal circumstances which, in their Lordships' opinion, would constitute such justification, are as follows:—

1st. Where the object for which the association is formed is one of a hazardous character, in which many individuals may be disposed to risk moderate sums, the aggregate of which may constitute a large sum sufficient for the undertaking, but in which a single capitalist, or two or three, under an ordinary partnership, would be unable or unwilling to engage. The working of mines is an example of this species of adventure.

2d. Where the capital required is of so large an amount that no single partnership could be expected to support the expense, as in the case of railways, canals, docks and works of that description.

3d. Where no great advance of capital, but extended responsibility, is desirable, as in the case of assurance companies, &c.

4th. Where the object sought can only be effected by a numerous association of indi-

viduals, such as the formation of literary societies, charitable institutions, and similar bodies.

The constitution and the object of the Scottish Porter Company does not appear to their lordships to afford any one of these grounds, or any other of importance, as a justification for letters patent being conceded to them.

The capital embarked in the undertaking is, according to the showing of the memorialists, of the most limited possible amount with reference to the business, nor does the amount to which it might be raised by this deed appear to be of an extent at all approaching to that which it is well known is constantly embarked by private individuals in similar business. There is nothing either in the nature of a brewery business which calls for its being conducted by a joint stock company, neither the risk attending it, nor the capital required, nor the responsibility, are of a nature to render private capitalist-, acting under the ordinary laws of partnership, less competent to conduct such a speculation than a joint stock company.

In the absence, therefore, of any such justification, it is the opinion of their lordships, that to grant the memorialists the power which they pray for, would be unnecessarily to interfere with the course of private speculation and individual enterprise carried on under the ordinary partnership laws; and their lordships, therefore, have no hesitation in submitting their opinion, that the prayer of the memorialists should not be conceded.

Ordered, that a report to the lords of the council, in conformity to this minute, be transmitted to Mr. Bathurst.

The following case has been very recently decided under the statute to which we have referred.

Case for the infringement of a patent.—The declaration stated that the plaintiffs complained of "John Bleaden, the Secretary of the Commercial Steam Packet Company, and the Defendant in this suit." That Galloway, before and at the time of the making of the letters patent and of the committing of the grievances by the said company as thereinafter mentioned, was the true and first inventor of certain improvements in paddle wheels for propelling vessels; that Galloway obtained his late Majesty's letters patent for his said invention, and duly enrolled a specification thereof; that the other defendant became assignee of an undivided moiety of the letters patent, yet the said company, well knowing the premises, but contriving, and wrongfully and injuriously intending to injure the plaintiffs, and to deprive them of the profits, benefits, and advantages which they might and otherwise would have derived or acquired from the making, using, exercising, and vending the said invention, infringed the patent. The defendant by his pleas contested the novelty of the invention, and at the trial a verdict was found for the plaintiffs, with nominal damages. The court exhibiting a strong disinclination to allow the amendment, it was agreed between the parties

that the rule for amending the declaration should be made absolute, and the rule for arresting the judgment discharged, and the plaintiffs paying the costs of both rules and consenting to waive the costs of the trial. Rule accordingly.*

THE LONG VACATION.

"My Long Vacation has now commenced," said our friend Horatio Luckless, as, freed from the restraints of circuit, he clambered up the outside of the Regulator stage coach, on his way back to London.—"Commenced did I say! but rather should I say continued; for when did my vacation not begin? My life is a vacation! Here have I been all round the circuit, and what have I got at the end of it? I was employed as junior for the plaintiff in an unopposed cause on a bill of exchange at G——; and at R—— I defended successfully a carrot-headed urchin for stealing two pounds of bacon; but here ends my civil and criminal business. It is true that a very fat attorney asked me at M——, whether I was not a Welchman, and seemed disappointed to hear I was not; and probably, if I had been, I might have had the third brief for the defendant in the great trespass cause of *Ap. Rice v. Girnigo*, relating to goats; but I never am what I should be, and I could not deny my country, which, as every one knows, is the county of the town of London. And where am I now proceeding? Round go the wheels, and by and bye hiss goes the steam engine, which carries me ten times faster than I wish to that eternal Pump Court! There will be the two porters at one end of it, looking out in vain for business; there will be Tompkins' laundress creeping along with two candles in her hand; and one solitary attorney's clerk walking away with the last brief of the season. All the outer doors are shut; and if you do see any one, he has a carpet bag or a leather hat box in his hand, or possibly a knapsack, indicative of a walking tour. But alas! no such good fortune for me this year. This unhappy circuit has fairly disposed of my allowance, and I shall have the pleasure of 'biding my time throughout the whole month of September, neither shooting, nor, I fear, eating partridges. I am, indeed, the true last man. I am deserted by all." And here he was interrupted in his soliloquy by the coachman, with a touch of the hat, and "leave you here, sir!"

* *Galloway v. Bleaden*, 1 Scott, N. C. 170.

THE
BANKRUPTCY AND INSOLVENCY
COMMISSION.

THE Report of the Bankruptcy and Insolvency Commission has now been printed. We were enabled to give an account in a previous number of the substance of its principal recommendations,^a and the Report confirms the accuracy of our information. But the recommendations of the Commissioners are sufficiently important to be given in their own words; and we propose, in a series of articles, to give them, and consider their nature and effect. The recommendations they contain have the sanction of all the Commissioners, with the exception of Mr. Law, the Insolvency Commissioner, who promises to support his views, as speedily as possible, in a separate paper. It will readily be seen that changes so important as those proposed in the Report cannot be adopted without mature deliberation.

EQUITY REFORM.

THE following is a copy of the petition to the House of Commons from many of the most eminent firms in the profession, presented a few days before the end of the last session.

“That the delay and expense at present attendant on proceedings in the Chancery Court are so great as effectually to close its doors against all, except the richer classes, of the community.

That the expense (which arises principally from the delay) is so serious as to render it imperative on the profession to prevent as far as possible the institution of suits for amounts much under 1,000*l*.

That therefore, while at common law, rights of small amount can without impropriety be submitted to legal decision, a very large and important section of the community (*viz*: persons interested in trust property of amounts under 1,000*l*.) are left without the protection of the law, and for them there is absolutely no Equity Court in operation.

That owing to this defect of our judicial institutions not only is individual wrong inflicted, without redress, in this class of society, but frauds as to trust property, offences against the most confidential relations, are actually encouraged by law, because permitted to pass with entire impunity.

That the commission of these serious wrongs as of all other offences against justice, can be

prevented only by the presence of a judicial establishment so strong as to be known by the public to be amply sufficient for coping with them, and applying to them not only complete, but very immediate redress.

That beyond the injury inflicted on those to whom all equitable relief is denied, the relief which is afforded to those who are induced by the greater magnitude of their claims, or by their greater personal wealth, to enter the court in search of justice, is lamentably deficient.

That the present judicial strength of the Equity Courts is, as your petitioners believe, physically unequal to deal with more than a very small part of the adverse business which, with all the drawbacks above alluded to, is yet actually brought before it.

That far the greater number of the present suitors are, by this incapacity of the court, of necessity compelled to compromise their suits on terms highly advantageous to the dishonest or oppressive, or to allow them to remain, for some long indefinite period of years, entirely unadjudicated upon.

That for even the small portion of equity cases at present disposed of by the court, the judicial arrangements of the country afford a most expensive and lingering, and therefore most unsatisfactory, relief.

That the Court of Chancery presents the single instance in the history of the country, of a great national establishment, altogether stationary as to the number of those coming within its operation, the suitors of the court having been as numerous one hundred years ago as they are now; and that the defects of the court have, as your petitioners believe, become fixed, from the entire insufficiency of the institution to meet the wants of the people.

That a state of circumstances so much to be deprecated calls for vigorous and immediate legislative interference.

That impressed with these convictions, your petitioners have with high satisfaction observed the progress through the other House of Parliament of a measure which they believe will very considerably conduce to the results so much to be desired.

That by concentrating the equity establishments of the country, and by increasing the judicial strength, not only will the wrongs with which equity deals be checked among those who are not now suitors to the court, and protracted justice, with its attendant mental anxiety, be to a large extent remedied among those who are; but a saving to the suitors in mere money cost will be effected, which will exceed by many times the expense that the additions proposed will induce.

That your petitioners are convinced that no effective improvements can be introduced into the Equity Courts, unless the duty to be assigned to the judges of superintending, controuling, and regulating the functions of the court and of its offices; and that to impose such duties with effect it is essential that there should be given to the judges powers commensurate with them.

^a See *ante*, p. 257.

That in particular some systematic arrangement by which any defect in the working of the offices, and any arrears existing in them, should of necessity be periodically presented to the judges, joined with full powers to correct and to supply such deficiencies, is, your petitioners feel satisfied, of the very first importance.

That better regulations as to the taxation of costs, and improved rules by which the injured party should be enabled to recover more than a mere fraction of the expence which he has necessarily incurred, are also most requisite.

That your petitioners therefore appreciate as of the highest value the provision introduced into the bill now before your honorable house, giving powers for these purposes to the judges of the court.

That as regulations of this kind require to be made with great deliberation, and of necessity must from time to time be amended,—your petitioners would humbly submit whether these powers should not be permanent instead of being granted only for a short period of years.

That further to carry out the required improvements, your petitioners trust that the present measure may be speedily followed by others addressed to the abolition of all useless offices in the court, and also to the institution of some effective Court of Appeal, not only for the Equity Suitors of England, but also for the suitors of the Colonies, and of such other parts of the empire as the legislature in its wisdom shall see fit.

That your petitioners trust, however, that the consideration of the necessity of these further measures of relief, beyond the measure now before your Honorable House, may not delay the passing of this most valuable bill, as your petitioners are convinced that it is most desirable that the objects proposed by it should first be attained, and that those other measures will be expedited, facilitated, and rendered more complete, if this precedes them.

That your petitioners humbly hope that in the representations which they have made of the importance of rendering the proceedings in Equity more expeditious and cheap, it will be felt by your Honourable House that they are advocating improvements of the greatest importance to the interests of the suitors and of the community, whilst at the same time your petitioners freely admit that they believe these improvements will also in the end be advantageous to their own body, from the conviction that the interest of the solicitor is in all these questions identified with that of his client."

Signed—

W. Tooke, 39, Bedford Row.

Adlington, Gregory, Faulkner and Follett, 1, Bedford Row.

Taylor, Sharpe, Field and Jackson, 41, Bedford Row.

Wing and Twining, Gray's Inn.

Dyneley, Coverdale, and Lee, Gray's Inn.

Kinderley, Denton, and Kinderley, Lincoln's Inn.

Wiglesworth, Ridsdale, and Craddock, Gray's Inn.

Brooksbank and Farn, 14, Gray's Inn Square.
Jones, Trinder, and Tudway, John Street, Bedford Row.

Bridges and Mason, Red Lion Square.

Holme, Loftus, and Young, New Inn.

Martineau, Malton, and Trollope, Carey Street, Lincoln's Inn.

Clayton and Cookson, Lincoln's Inn.

Whitmore, Roumieu, and Walters, Lincoln's Inn.

Austen and Hobson, Gray's Inn.

Edward Lambert, Gray's Inn.

Megg'son, Pringle, and Manisty, King's Road.

White and Whitmore, 11, Bedford Row.

Edward Whittaker, 5, Gray's Inn Square.

Henry Gay, 10, Lincoln's Inn Fields.

White and Borrett, 35, Lincoln's Inn Fields.

Bell and Steward, 59 Lincoln's Inn Fields.

Blower and Vizard, 61, Lincoln's Inn Fields.

Chisholme, Hall, and Gibson, 64, Lincoln's Inn Fields.

Wharton, J., and M. Ford, 64, Lincoln's Inn Fields.

Palmer, France, and Palmer, 24, Bedford Row.

Richards and Walker, 29, Lincoln's Inn Fields.

D. Bockett, 60, Lincoln's Inn Fields.

11. and C. Hall, 16, New Boswell Court.

Hawkins, Bloxam, and Stocker, 2, New Boswell Court.

R. B. Armstrong, Staple Inn.

J. W. Bromley, Gray's Inn.

Capes and Stuart, 48, Bedford Row.

Williamson and Hill, Gray's Inn.

White, Blake, Houseman, and Tylee, 14, Essex Street, Strand.

E. Chester, Staple Inn.

E. M. Gray, Staple Inn.

Cardale, Cardale and Iliffe, 2, Bedford Row.

Clarke and Medcalf, 20, Lincoln's Inn Fields.

J. Vincent Harting, 24, Lincoln's Inn Fields.

Budd and Hayes, Bedford Row.

Winter, Williams, and Williams, 16, Bedford Row.

Norris, Allen, and Simpson, 19, Bartlett's Buildings, Holborn.

William Witham, 8, Gray's Inn Square.

Alexander, Gem, and Pooley, 60, Lincoln's Inn Fields.

Williams, Brooks, Powell, and Broderip, 9, New Square, Lincoln's Inn.

J. and W. Lowe, Inner Temple.

Milne, Purry, Milne, and Morris, Temple.

R. M. and C. Baxter, Lincoln's Inn Fields.

Barrett and Eyston, Gray's Inn.

Charles Lever, King's Road, Bedford Row.

Egan, Waterman, and Wright, Essex Street.

Fladgate, Young, and Jacksons, 12, Essex Street.

Clarke, Fynmore, and Fladgate, 43, Craven Street.

Battye, Fisher, and Sudlow, 20, Chancery Lane.

Pownall and Cross, 9, Staple Inn.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No. XV.

POOR LAW COMMISSION.

CAP. 42.—*An Act to continue the Poor Law Commission until the thirty-first Day of December one thousand eight hundred and forty-one.* [4th August 1840.]

4 & 5 W. 4, c. 76, ss. 1, 10. 2 & 3 Vict. c. 83. *Poor Law Commissioners, &c. continued.*—

Whereas by an act passed in the fifth year of the reign of his late Majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," provisions were made for the appointment of Poor Law Commissioners, Assistant Commissioners, Secretaries, and other officers, and for their continuance in office until the end of the session of Parliament held next after the fourteenth day of August in the year one thousand eight hundred and thirty-nine; and by another act, passed in the third year of the reign of her present Majesty, provision was made for their further continuance in office until the fourteenth day of August in the year one thousand eight hundred and forty, and thenceforth until the then next session of Parliament; and it is expedient to extend such provisions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every Poor Law Commissioner appointed by his late Majesty, or appointed or to be appointed by her Majesty the Queen, her heirs and successors, and every Assistant Commissioner, Secretary, and other officer and person, duly appointed by the Poor Law Commissioners, shall be empowered (unless he shall previously resign or be removed) to hold his office, and exercise the powers thereof, until the thirty-first day of December in the year one thousand eight hundred and forty-one; and until the expiration of the said period, it shall be lawful for her Majesty, her heirs and successors, from time to time, at pleasure, to remove any of the said Commissioners for the time being, and upon every or any vacancy in the number of Commissioners, either by removal or by death or otherwise, to appoint, by warrant under the royal sign manual, some other fit person to the said office; and until such appointment it shall be lawful for the surviving or continuing Commissioner or Commissioners to act as if no such vacancy had occurred.

2. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

CAP. 43.—*An Act for repairing Blenheim Palace.* [4th August 1840.]

CAP. 44.—*An Act to amend an Act of the 7 Geo. 4, for consolidating and amending the Laws relating to Prisons in Ireland.* [4th August 1840.]

No XVI.

TURNPIKE ACTS CONTINUANCE.

CAP. 45.—*An Act to continue until 1st June 1842, or if Parliament shall be then sitting, until the end of the then next session of Parliament, the Local Turnpike Acts for Great Britain, which expire with this or the ensuing Session of Parliament.* [4th August 1840.]

Turnpike Acts for Great Britain near expiring continued for a further term.—Whereas it is expedient that the several acts for regulating turnpike roads in Great Britain hereinafter referred to should be continued for a limited time: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that every act for making, amending, or repairing any turnpike road or roads in Great Britain which will expire on the first day of June in the year one thousand eight hundred and forty-one, or if Parliament shall be then sitting, at the end of the then session of Parliament, shall be and the same is hereby continued until the first day of June one thousand eight hundred and forty-two, or if Parliament shall then be sitting until the end of the then session of Parliament.

2. *Act not to extend to 58 G. 3, c. xiv.*—And be it enacted, that nothing in this act contained shall extend or be construed to extend to an act passed in the fifty-eighth year of the reign of his late Majesty King George the Third, intituled "An Act for repairing the Road from Blakedown Poole in the parish of Hagley, in the county of Worcester, to Birmingham in the county of Warwick."

CAP. 46.—*An Act to continue for one year from the passing of this Act, and thenceforth until the end of the then next session of Parliament, the several Acts for regulating the Turnpike Roads in Ireland.* [4th August 1840.]

No. XVII.

RE-ELECTION OF RETURNING OFFICERS.

CAP. 47.—*An Act to repeal so much of the Act 9 Anne as prevents the re-election of Mayors of Parliamentary Boroughs and other annual returning officers.* [4th August 1840.]

6 Anne, c. 20.—*Provision in revoked Act repealed.*—Whereas by an act passed in the ninth year of the reign of her late Majesty Queen Anne, intituled "An Act for rendering the Proceedings upon Writs of Mandamus and Informations in the Nature of a Quo Warranto

more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs," after reciting that "in divers counties, boroughs, towns corporate, and cinque ports, where the mayor, bailiff, or other officer or officers to whom it belonged to preside at the election and make return of any member to serve in Parliament ought to be annually elected, the same person had been re-elected into such office for several years successively, which had been found inconvenient," it was enacted "that no person or persons who had been or should be in such annual office for one whole year should be capable to be chosen into the same office for the year immediately ensuing; and that where any such annual officer or officers should be to continue for a year, and until some other person or persons should be chosen and sworn into such office, if any such officer or officers should voluntarily and unlawfully obstruct and prevent the choosing another person or persons to succeed into such office at the time appointed for making another choice, he or they should forfeit one hundred pounds for every such offence, to be recovered, with costs of suit, by such person as would sue for the same in any of her Majesty's Courts of Record before mentioned, by action of debt, bill, plaint or information, wherein noessoign, protection, or wager of law should be allowed, nor any more than one imparlance, one moiety thereof to her Majesty, her heirs and successors, and the other moiety to him or them that would sue for the same." And whereas such provision has now become unnecessary and inexpedient; be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of the said act of the ninth year of the reign of her late Majesty Queen Anne as is herein-before recited shall be and the same is hereby repealed.

2. *Election of the returning officers re-elected not to be questioned under the above provision.*—And be it enacted, that no person who shall before the passing of this act have been re-elected into any office by virtue of which it belongs to him to preside at any election or make return of any member to serve in Parliament shall be deemed to have been incapable of being chosen into such office, or be liable to have his right to exercise such office questioned, by reason of so much of the said recited act as is hereby repealed.

CAP. 48.—An Act to enable proprietors of entailed estates in Scotland to feu or lease on long leases portions of the same for the building of churches and schools, and for dwelling houses and gardens for the ministers and masters thereof. [4th August 1840.]

CAP. 49.—An Act to consolidate and amend the laws for collecting the duties of excise on soap made in Great Britain.

[4th August 1840.]

Royal Assent, 4th August.

CAP. 50.—An Act to provide for keeping the peace on Canals and navigable Rivers.

CAP. 51.—An Act to amend and explain the general Turnpike Acts, so far as relates to the Toll payable on carriages or horses laden with lime for the improvement of land.

CAP. 52.—An Act to provide for the administration of the Government in case the Crown should descend to any issue of her Majesty whilst such issue shall be under the age of eighteen years, and for the care and guardianship of such issue.

CAP. 53.—An Act for vacating any presentment for rebuilding the Gaol of Newgate in Dublin, and vacating any contract between the commissioners for rebuilding the said gaol and the contractor.

CAP. 54.—An Act for making further provision for the confinement and maintenance of Insane Prisoners.

CAP. 55.—An Act to enable the owners of Settled Estates to defray the expence of draining the same by way of mortgage.

Royal Assent, 7th August.

CAP. 56.—An Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter.

CAP. 57.—An Act to impose Duties of Excise on Sugar manufactured in the United Kingdom.

CAP. 58.—An Act to amend the acts relating to the River Poddle in the county and city of Dublin.

CAP. 59.—An Act for the amendment of the Law of Evidence in Scotland.

CAP. 60.—An Act to further amend the Church Building Acts.

CAP. 61.—An Act to amend the acts relating to the general sale of Beer and Cider by retail in England.

CAP. 62.—An Act to continue until the thirty-first day of December one thousand eight hundred and forty-one, and to the end of the then next session of Parliament, and to extend the provisions of an act to provide for the administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto.

CAP. 63.—An Act to extend the powers of the commissioners appointed for the execution of two acts for supporting the several Harbours and Sea Ports in the Isle of Man.

- CAP. 64.**—An Act to continue, until eight months after the commencement of the next session of Parliament, an act for authorising her Majesty to carry into immediate execution, by orders in council, any treaties for the Suppression of the Slave Trade.
- CAP. 65.**—An Act to improve the practice and extend the Jurisdiction of the High Court of Admiralty of England.
- CAP. 66.**—An Act to make provision for the Judge, Registrar, and Marshal of the High Court of Admiralty of England.
- CAP. 67.**—An Act for carrying into effect the treaty between her Majesty and the republic of Venezuela, for the Suppression of the Slave Trade.
- CAP. 68.**—An Act to enable her Majesty in council to authorize ships and vessels belonging to countries having Treaties of Reciprocity with the United Kingdom to be piloted, in certain cases, without having a licensed pilot on board; and also to regulate the mode in which Pilot Boats shall be painted and distinguished.
- CAP. 69.**—An Act to continue, for six months after the commencement of the next session of Parliament, an act of the last session of Parliament, for carrying into effect a convention between her Majesty and the King of the French, relative to the Fisheries on the coasts of the British Islands and of France.
- CAP. 70.**—An Act to defray the charge of the pay, clothing, and contingent and other expences of the Disembodied Militia in Great Britain and Ireland; and to grant allowances in certain cases to Subaltern officers, adjutants, paymasters, quartermasters, surgeons, assistant surgeons, surgeon's mates, and serjeant majors of the militia, until the first day of July one thousand eight hundred and forty-one.
- CAP. 71.**—An Act to suspend until the end of the next session of parliament the making of lists and the ballots and enrolments for the Militia of the United Kingdom.
- CAP. 72.**—An Act to provide for the Solemnization of Marriages in the districts in or near which the parties reside.
- CAP. 73.**—An Act to explain and amend the acts relating to friendly societies.
- CAP. 74.**—An act for the better protection of the Oyster Fisheries in Scotland.
- CAP. 75.**—An Act to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service.
- AP. 76.**—An Act to empower the Lord Lieu-
- tenant of Ireland to annex certain townlands to the county of Roscommon.
- CAP. 77.**—An Act for improving the condition and extending the benefits of Grammar Schools.
- CAP. 78.**—An Act to provide for the sale of the Clergy reserves in the province of Canada, and for the distribution of the proceeds thereof.
- CAP. 79.**—An Act to amend the law relating to the Admission of Attornies and Solicitors to practise in the Courts of Law and Equity in Ireland.
- CAP. 80.**—An Act to continue until the first day of March one thousand eight hundred and forty-five, and from thence to the end of the then next session of Parliament, the several acts relating to Insolvent Debtors in India.
- CAP. 81.**—An Act to define the notice of elections of members to serve in parliament for cities, towns, and boroughs in England.
- CAP. 82.**—An Act for further amending the act for abolishing Arrest on Mesne Process in Civil Actions.
- CAP. 83.**—An Act to continue, until the first day of January one thousand eight hundred and forty-three, an act of the last session of parliament, for amending and extending the provisions of an act of the first year of her present Majesty, for exempting certain bills of exchange and promissory notes from the operation of the laws relating to usury.
- CAP. 84.**—An Act for better defining the powers of justices within the Metropolitan Police District.
- CAP. 85.**—An Act for the better regulation of Chimney Sweepers and Chimneys.
- CAP. 86.**—An Act for better enforcing Church Discipline.
- CAP. 87.**—An Act to enable her Majesty's Commissioners of Woods, Forests, Land Revenues, Works and Buildings, to make additional thoroughfares in the Metropolis.
- CAP. 88.**—An Act to amend the act for the establishment of County and District Constables.
- Royal Assent, 10th August.*
- CAP. 89.**—An Act to exempt, until the thirty-first day of December one thousand eight hundred and forty-one, Inhabitants of parishes, townships, and villages from liability to be rated as such, in respect of stock in trade or other property, to the relief of the poor.

CAP. 90.—An Act for the care and education of Infants who may be convicted of Felony.

CAP. 91.—An Act for the more effectual Prevention of Frauds and Abuses committed by Weavers, Sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the then next session of parliament.

CAP. 92.—An Act for enabling Courts of Justice to admit non-parochial registers as evidence of births or baptisms, deaths or burials, and marriages.

CAP. 93.—An Act to amend the act for the better regulation of Ecclesiastical Courts in England.

CAP. 94.—An Act for facilitating the administration of justice in the Court of Chancery. Printed p. 310, *ante*.

CAP. 95.—An Act to enable her Majesty to carry into effect certain stipulations contained in a treaty of commerce and navigation between her Majesty and the Emperor of Austria; and to empower her Majesty to declare, by order in council, that ports which are the most natural and convenient shipping ports of states within whose dominions they are not situated, may in certain cases be considered, for all purposes of trade with her Majesty's dominions, as the national ports of such states.

CAP. 96.—An Act for the regulation of the Duties of Postage.

CAP. 97.—An Act for regulating railways.

CAP. 98.—An act to authorize, for a limited time, the application of a portion of the Highway Rates to Turnpike Roads in certain townships and districts.

CAP. 99.—An Act for taking an account of the Population of Great Britain.

CAP. 100.—An Act for taking an account of the Population of Ireland.

CAP. 101.—An Act to amend several acts relating to the temporalities of the Church in Ireland.

CAP. 102.—An Act to amend the law relating to Court Houses in Ireland.

CAP. 103.—An Act to amend an act of the last session for making further provisions relating to the Police in the district of Dublin Metropolis.

CAP. 104.—An Act to transfer to the Commis-

sioners of her Majesty's Woods and Works, and other commissioners, the several powers now vested in the commissioners for repairing the line of road from Shrewsbury in the county of Salop to Bangor Ferry in the county of Carnarvon; and to amend the London and Holyhead Road Acts, so far as relates to the Dunstable Road.

CAP. 105.—An Act for Abolishing Arrest on Mesne Process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for the further amendment of the Law and the better advancement of Justice in Ireland.

CAP. 106.—An Act for raising the sum of ten millions seven hundred fifty-one thousand five hundred and fifty pounds by Exchequer Bills, for the service of the year one thousand eight hundred and forty.

CAP. 107.—An Act to continue and amend the Laws for the relief of Insolvent Debtors in Ireland.

CAP. 108.—An Act for the regulation of Municipal Corporations in Ireland.

CAP. 109.—An Act to annex certain parts of certain counties of cities to adjoining counties; to make further provision for compensation of officers in boroughs; to limit the borough rate; and to continue for a limited time an act to restrain the alienation of corporate property in Ireland.

Royal Assent, 11th August.

CAP. 110.—An Act to amend the Laws relating to Loan Societies.

CAP. 111.—An Act to continue until the thirty-first day of August one thousand eight hundred and forty-two, and to extend the provisions of an act of the first and second years of her present Majesty, relating to legal proceedings by certain Joint Stock Banking Companies against their own members, and by such members against the companies.

CAP. 112.—An Act to apply a sum out of the Consolidated Fund to the service of the year one thousand eight hundred and forty, and to appropriate the Supplies granted in this Session of Parliament.

CAP. 113.—An Act to carry into effect, with certain modifications, the fourth report of the Commissioners of Ecclesiastical Duties and Revenues.

. Such of the acts relating to the law as have not been given, will be printed with notes as early as our space will admit. Ed.

NOTES ON THE EXAMINATION.

BY A BYSTANDER.

[Continued from p. 281.]

THE candidates did not altogether succeed in dismissing anxiety, for Singleton acknowledged that the examination was his principal topic of conversation with some legal friends on the preceding evening, who unanimously thought the examiners had hitherto not been severe, but that they had a duty to perform towards the profession and the public, and as nearly five years had elapsed since the examinations commenced, every one had had fair warning, and would be expected to shew very considerable proficiency.

It was evident this was not lost upon Singleton, who enjoyed the repetition of it to his friends, on whom he said it had the effect of lowering their spirits full fifty per cent. Neverfear was more charitably disposed, and therefore mentioned the cases of several who had passed, all of whom, he blushing said, were reputed less clever than himself, and that one of them had told him, he had answered only forty-two of the questions, ten of which were wrong. Singleton, however, was determined to dissipate the gleam of hope which Mr. Neverfear's telling his own story had occasioned, and therefore, on hearing that this happened a year ago, he observed that no one knew better than Mr. Neverfear that a great deal of law might be got through in a year, regard being had to the "railway rate" at which he had been studying (with an emphasis):—three hundred pages in two days (for, of course no gentleman read law on a Sunday) would, in a few years, exhaust an ordinary library, and not only make the indefatigable reader a match for the examiners, but fit him for the chancellorship, always supposing it was both worth reading and well read, of which, in Mr. Neverfear's case, he thought there was some doubt.

Neverfear was disconcerted, and hesitatingly admitted he did not intend that his reference to Archbold should be considered as indicating his ordinary mode of study; but he had been much occupied during his clerkship, and thought it wise to *cram* a little during the last few days, though of the utility of doing so at the present moment he had some doubt.

Newton then observed, that he feared the cramming system operated injuriously upon those who practised it, they being mostly young men with unenviable reputations for industry, who vainly expected to do that in a few days which ought to employ as many weeks; and as the examination approached, their hurry and anxiety increased, and nothing they did was done as it ought to be, or properly deserved the name of study. He confessed that he had been anxious,—intensely anxious,—about this examination, because its result would probably give an unalterable colour to his future prospects; four hours a day had been about the average he could devote to books and do justice

to his master, who had specially devoted an hour a day during the last six months for his benefit; yet after all he confessed, that from the moment that he had set foot in London to that of reading the questions, he had suffered severely; but having read them, the formidableness of the examination greatly diminished, although, as his anxiety was not subdued, two or three of his answers were foolishly and unpardonably wrong; but he hoped they would be set down to carelessness rather than ignorance.

Neverton advanced a crotchety argument that carelessness was more dangerous in practice than ignorance, and that it would be so considered by the Examiners; but this was denied by Singleton with all the confidence of one having authority to decide upon it.

Neverfear was far from satisfied, and therefore imploringly enquired if any of the gentlemen knew the Examiners, understanding that some were more strict than others: but no one knew them. Singleton said he did not care who the Examiners were, but he should like to know the gentleman in black who so assiduously watched over them, baulking good nature, by turning all their answers upside down. Neverfear tauntingly referred him to the messengers, which roused the indignation of Singleton: his good sense, however, prevailing, he merely said his object was to satisfy curiosity, not to obtain relief from anxiety; and calmly recommending Neverfear to prefer relying upon his own exertions than the chapter of accidents, he reached his hat, and provokingly told them he was *going to his agents*.

Breakfast being over, Newton observed that at four o'clock they should know their fate, and hoping that it would prove an agreeable one, he bade them good morning.

Four o'clock came, and in less than ten minutes they had all made themselves acquainted with the important result, which we have great pleasure in saying was satisfactory; and before five the important intelligence was forwarded to their numerous relations, friends, and well-wishers in most parts of the kingdom. Singleton said his ten letters did not contain three folios: "A certificate that Tom Singleton is duly qualified to be admitted an attorney is before me—so no more law for a week," being about one of the longest.

The next morning the friends again met at breakfast, and having congratulated each other upon their success, they ventured to praise the Examiners: and Neverfear, in particular, talked very freely of the fairness of the questions; but baffled the ingenuity of Singleton, who sought to ascertain how many he had answered.

It appeared that they all intended to practise in the country; and we could not help observing the importance they attached to the employment of respectable London agents: as incidental to which, they discussed, at some length, the question, whether large houses of agency or smaller ones were more desirable to the young practitioner; and although we are obviously precluded from repeating the numerous arguments which were severally advanced in favour of their different views, we

are happily not so from stating as a fact, that each individual was confident that he had been fortunate in selecting the most respectable house in London.

Singleton was the destined successor to a large conveyancing practice, which he said had happily been gathered for him, and that the only hindrance to his really liking the profession was the petty jealousies which he feared tarnished its respectability as a liberal profession among some of the country practitioners.

We were surprised at this, as well as at Singleton's expressing his determination never to marry the daughter of an auctioneer, for the purpose of having a jackall, or to leave the church for the conventicle, as a professional speculation—never to advertize cheap law, and as a matter of prudence, not to leave a bill of costs to the settlement of a London attorney, if it contained a charge for a London journey.

All this was uttered in a tone and manner which was conclusive of the sincerity of the speaker, and with the exception of the last, met with the unanimous approbation of the hearers, who thought it involved a reflection upon the London attorneys, as each of them was quite sure that his agents would be always ready to deal, not only fairly but liberally, on any occasion of the sort which might be brought before them.

Newton asked for an explanation.—Singleton protested against any intention of reflecting upon the Londoners, but said if they had read the case of (we think) *Aloop v. Oxford*, Myl. and Craig, they would see the principle upon which they acted, and (if we mistake not) that he had brought forward that case as being in their favor, having several times known it to be acted upon in private arrangements.—The facts, observed Singleton, were that a country solicitor having an abstract which the master allowed sixty hours for the examining by an agent, took a journey to London for the purpose of doing it himself. The title being evidently an important and heavy one, they knew it required great care in the examination, for the correctness of which the country solicitor was responsible; besides which he had some doubt whether such a proceeding came under the proper denomination of agency—adding, that upon the question of usage that all abstracts were sent up to town for examination by the agent, extensive enquiry had been made amongst country solicitors, but it was not found to exist, nor should be ever in his own case acknowledge it. Without disparaging the London practitioners, I believe, (continued Singleton,) that few of those in the country would fancy entrusting all of them with such an abstract as that in *Aloop v. Oxford*. Sixty hours is equal to ten days, the charge for which to the agent would be 10*l.*, which would be an inadequate compensation, supposing he attended to it himself; and if he did not, it was too important a matter to be left to two unknown clerks, who might think their duty performed by merely seeing that what was in the abstract was in the deeds, without troubling themselves to ascertain if all that related to the title was

in the abstract. It might be admitted that the agent, if he undertook the examination, was answerable over to the country solicitor, but in a purchase of 10 or 15,000*l.*, he might not be able to do so.

Neverton said he thought the country solicitor might protect himself from responsibility by procuring the consent of the client to his waiving the duty of a personal examination, and an authority for the agent's doing so, or he might entitle himself to charge for the journey by an explanation to the client, and procuring his authority to make it. As to the first, observed Singleton, no waiver by the client without the fullest explanation could relieve the solicitor from responsibility for the neglect or any failure of his agent, of whose ability in an action at law, or a suit in chancery, he might have the highest opinion, whilst he might think little of his conveyancing knowledge,—and he would be bound to make this known to the client. As to the second, supposing the client to be close-fisted, he might say, 'I employed you to transact my business properly, and hold you responsible to do so. If your agent is not a conveyancer, or employs incompetent clerks, that is not my fault; but I will not release you, with whose responsibility I am satisfied, nor will I pay one farthing more than I am strictly bound to according to *Aloop v. Oxford*.'^a Under such circumstances how is the solicitor to act? Is he to seek to revive the old system, and employ counsel to examine the abstract; to change his agent; run the risk; or give up the business? But these were questions more easily asked than answered.

Newton gave a turn to the conversation by some striking remarks upon what is called "abstracting," which he thought required looking into by the profession. We do not profess thoroughly to understand the subject; but we agree with Mr. Newton that an abstract ought not to be almost a copy of the deed; nor is the practice of spinning out by skipping one or two lines between each instrument, such a one as would recommend itself to such men as Newton's late master, whose last words of counsel to Newton were, "always regard a client as a friend you ought to serve, and not as a pigeon you were at liberty to pluck."

But the time for separation at length arrived, as they all had preparations to make for their admission on the following morning.

SELECTIONS FROM CORRESPONDENCE.

BANKER'S DRAFT PROVED AS A CODICIL.

WITH respect to the case mentioned pp. 282, 314, in which the Ecclesiastical Court allowed a banker's draft to be proved as a codicil, I beg to refer to the case of *Bartholomew v. Henley*, 3 Phillim. Eccl. Rep. 317, in which a

^a Myl. & Craig.

similar proof was admitted. See also *Wins. on Exors.* (first edn.) p. 55.

It should be observed that in *Bartholomew v. Henley*, it was clear from the wording of the checks that they were given with the intent that they should operate as legacies in the event of the testator failing to complete his will.

It is of course less likely that any future claim should be made to prove a check given on or since 1st Jan. 1838, because of the attestation now requisite (1 Vict. c. 26, ss. 1, 9, 34.) A STUDENT OF THE TEMPLE.

UNSTAMPED AFFIDAVIT OF EXECUTION OF ARTICLES.

I was articled to a solicitor in London in 1835, and had the drawing out of my articles without any guidance but a Book of Practice, and on having them inrolled, the affidavit of execution by the attesting witness was written on a sheet of foolscap *unstamped*, the Practice not stating a stamp to be necessary, and I not knowing it to be requisite until two or three years after by accident.

My time is out in October next, and though I am not going to apply for immediate admission, I have thus trespassed on your kindness for advice under my unfortunate mistake.

A. B.

[The affidavit may be stamped on payment of the penalty. If the articles are marked as duly registered, the Examiners can make no objection, as the affidavits of due execution &c. are not left with them; but the Judge on granting his fiat, or the Master on admission, may require a stamp to be affixed. Ed.]

SUPERIOR COURTS.

Rolls Court.

MORTGAGE.—SETTLED ACCOUNT.

Where an account of principal and interest has been settled between the mortgagor and mortgagee, after the mortgagee has taken possession of the mortgaged property, and the rents subsequently received are more than sufficient to satisfy the accruing interest, the mortgagor is entitled to annual rests, though there was an arrear of interest due to the mortgagee at the time of his taking possession.

In 1789 a term of 500 years was assigned to John Clewer, to secure 40*l.* and interest, and in the same year he took possession of the mortgaged property. In 1797, an account was made up between the parties, which contained a statement of the expenditure of the mortgagee for repairs, &c. and of the principal

and interest on the mortgage, when it was ascertained that the amount due for principal, interest, and expenses was 124*l.* 18*s.* 8*d.* In 1824, the plaintiff contracted with the representative of the mortgagor for purchase of the mortgaged premises, subject to the mortgage, in consideration of 30*l.*, and by indentures of the 12th and 13th of August 1834, the same were conveyed to him. A short time afterwards, he tendered the defendant, who was the representative of the mortgagee, 40*l.* in discharge of all claim on account of the mortgage, which the defendant refused to accept, and the plaintiff thereupon filed his bill for an account and redemption. The cause was heard on the 14th of February 1835, when a reference was ordered to the Master to take an account of what was due for principal and interest on the mortgage, and of the rents and profits received by the mortgagees, and to enquire whether any sums had been laid out by John Clewer, or his representative, in repairs, or otherwise for the support of the mortgaged premises. The Master made his report in 1839, and found a small sum due. To this report the plaintiff excepted on the ground that the Master had not taken the account with annual rests, which the plaintiff insisted he was entitled to require, and stated that had the account been so taken, a considerable balance would have been found due from the defendant. The cause having been heard a few days ago,

The Master of the Rolls now delivered judgment, and, after referring to the facts above set forth, stated that at the time the mortgagee took possession in 1789, there could not have been more than half-a-year's interest due, and it did not clearly appear whether any interest was in fact due, but it must be presumed there was some arrear. In 1797 the amount found to be due for principal, interest, and expenses was 128*l.* 18*s.* 8*d.* On this sum the Master has computed interest, taking the account then made up as a settled account of the mortgaged debt, and in so doing he was right. On the settlement of that account, the interest was converted into principal, and there was then 128*l.* 18*s.* 8*d.* due on account of the mortgage, and nothing for interest. The mortgagee continued in possession, and the rent and profits subsequently received were more than sufficient to keep down the accruing interest, and the question then was, whether the rents, after satisfying the interest, should be applied in reduction of the principal due on the mortgage—whether, in short, annual rests should be taken. Some qualification ought to be made to the general rule where the circumstances of the case require it; but in the absence of any special reason, if there is any interest due at the time of the mortgagee taking possession, he does not afterwards become liable to have his account taken with annual rests.

His Lordship added that he was not aware of any case where accounts would be deemed as settled accounts without some express acknowledgment, but that accounts ought to be

so considered when they are made up between the parties and a balance ascertained; and this having been done in this case in 1797, the annual rents of the mortgaged property from the 25th of March in that year, must be applied towards reduction of the principal of the mortgage debt, then ascertained, after satisfying the interest which from time to time subsequently accrued due, and it must be referred back to the Master to take annual rests from that period.

Wilson v. Clower, August 3d, 1840.

See *Finch v. Brown*, L. O. Vol. 20, p. 268.

Queen's Bench.

[Before the Four Judges.]

ECCLESIASTICAL LAW.—MANDAMUS.

In a case in which the crown claimed the right of nominating to a deanery, and the members of the chapter of the cathedral church claimed in opposition thereto to elect the dean from among their own body, and had actually made the election and instituted the dean, a mandamus to the chapter to proceed to qualify, and then to elect, the nominee of the crown, was refused.

The Attorney General moved for a rule for a *mandamus* to issue to the defendants, commanding them to proceed to the election of the Rev. Thomas Grylls, clerk, to the office of dean of a cathedral church, and to do all things necessary on their parts that he might be so elected. Since the reformation, the crown had *de facto* exercised the power of appointment to the old and new deaneries. With respect to the new deaneries, there was no difficulty whatever; with respect to the old deaneries, there was no difficulty as to the fact that the crown had exercised the power, but there was a difficulty as to accounting for the manner in which the power of appointment had been vested in the crown. This deanery was created so long ago as 1225. In that year there was a charter, by which it was declared that one of the canons of the cathedral should be elected by and out of the chapter to be the dean. The grant of confirmation of this charter described the person to be elected as "such fit person as should be a canon in the said cathedral church." Till the reformation it did not appear what was the power of the crown in the election, though it was clear that before then the crown had nominated the person to be elected. It might have been by letters missive. The right to issue a *congè d'elire*, and the necessary obedience to it, were provided for by the statute 25 Henry 8th, with respect to bishops; but nothing was said in that statute relative to deaneries. Though anciently deans were elected by the chapter, yet at the recommendation of the popes, the appointment of deans was taken into the hands of the crown, the object of the popes being by that means to get the real power of appointment into their own hands. When the reformation happened, the crown claimed and exercised the power of appointment. In December 1559, occurred

the first election by the chapter on the recommendation of the crown, and from that time until the present the election had been uniformly according to the recommendation of the crown. The right of the crown was now for the first time disputed. In some of the cases the person recommended was not a canon of the cathedral at the time of the recommendation. By the provisions of the charter such person ought to be a canon; and the course in such cases had uniformly been for the chapter to make him a canon, and then to proceed according to the recommendation of the crown to elect him a dean. At the close of the year 1838, Dr. Whittingworth Lamb, the dean, died; on the 1st of April, 1839, letters patent were issued by the crown in favor of Mr. Grylls. At that time Mr. Grylls was not a canon of the cathedral, and the members of the chapter thought that under the provisions of the 6th and 7th Wm. 4, c. 67, they had no power to make him one. The 2 & 3 Vict. c. 14, was then passed, to remove doubts on that subject, and that act received the royal assent on the 4th of June, 1839. A fresh nomination of Mr. Grylls, who was a member of the chapter, was then issued by the crown on the 12th of June, but the members of the chapter still refused to elect him. On the 27th of June, they proceeded, not only without the sanction of the crown, but against its recommendation, to elect the Rev. Thomas Lowe. There was a protest against the election of this latter gentleman, but he was nevertheless installed into office. That election was, under the circumstances stated, absolutely void. Lord Coke had laid it down, "that deans of the old sort, came in, in much like sort as bishops do, for they are chosen by the chapter by a *congè d'elire*, as bishops be, and the king giving his royal assent, they are confirmed by the bishop." Mr. Hargrave, in his notes on Lord Coke, fully adopted that opinion, and both these writers referred the appointment to the right of the crown.

The rule was granted.

Sir W. Fullett (Mr. M. Smith was with him) shewed cause.—There is nothing to warrant the application for a *mandamus*. Deaneries are not like bishoprics. There was a difference between the bishopric of Exeter and the deanery from their very foundation. The bishopric was founded in 1050—the deanery in 1255, by one of the bishops of the see, being the last that was founded in this kingdom before the Reformation. The chapter consists of twenty-four prebendaries, which, however, are not in the gift of the bishop. Out of these, nine canons residentiary are elected. The first dean was elected by the chapter, and confirmed by the bishop, and there never has been any alteration whatever in that mode of proceeding. The vacancy has always been represented to the bishop, who has then issued his licence to the chapter to elect. The chapter has then assembled and elected one of the canons, who has been presented to the bishop, who then sat

for the purpose of examining whether the election was regular or not. The party elected, if confirmed, has then taken the oath of canonical obedience, and been instituted by the bishop, according to the form prescribed by the instrument of foundation. The person thus elected has finally been installed by the chapter, under the authority of a mandate issued by the bishop. There have been but two exceptions to this mode of proceeding, and they were confirmed, if confirmation was necessary, the fact that the bishop is the patron. These instances occurred in 1274 and 1366, when the bishop conferred the deanery by lapse. In 1553 occurred the first instance of any interference on the part of the Crown. That was after the Reformation, and the event occurred just before the death of Edward VI., but even at that time the Crown did not pretend to appoint, but only to have the right to command the chapter to proceed to an election. The Crown never had any power to present. The claim of the Crown is not stated here in such a way as to give it a right which can be enforced by *mandamus*. Such a right is that of conferring as a donative, or presenting to the bishop, who is bound to institute the individual so presented. The right of the Crown is not the prerogative of the Crown, even in the matters of bishoprics, but is a right of presentation. None such exists in the present case. In a case like this, all must depend on the foundation, or if that cannot be resorted to, then the usage. With respect to bishoprics, they are all of the foundation of the Crown, and the qualified rights of the chapter are drawn from the charter of the Crown. But the cases of the election of bishops and of deans differ from each other, and the latter are not within the statute of Henry VIII., which regulates the former. Mr. Hargrave's note on Coke upon Littleton,^b which will be relied on by the other side, does not warrant the construction contended for. It is not an authoritative statement of what is the law, but an historical account of its origin and operation, and the historical part of that note is not correct. That is shewn by reference to the observations on the election of the Dean of St. Patrick's in Dublin. The burden of proving the right claimed here lies upon the Crown, and no such proof has been given. But even if that right did exist, this is not the proper method to enforce it. A *mandamus* cannot be granted if a *quare impedit* will lie. A *quare impedit* will lie here.^c The case of the *Bishop of Chichester v. Hurwood*,^d does not authorise the granting of this *mandamus*; what fell from one of the Judges there, being a mere *dictum*, not called for by the circumstances of the case. No *mandamus* of this sort will lie when a corporate office is already full, as it is here. On neither the facts nor the law of this case can this rule

be made absolute. On the facts it is clear that the foundation of the deanery was by the bishop, and that the election has always been with the chapter, subject to his approval; and on the law it is clear that whether the present occupant improperly holds the office is a matter which can be better tried in another way than by a *mandamus*. Some other remedy existing, that by *mandamus* will not be granted.

The *Attorney General* (with whom were Sir F. Pollock and Mr. Wightman) in support of the rule.—The rules which are adopted by this Court on granting or refusing writs of *mandamus* &c., in corporate cases, cannot apply here. There had been a regular presentation by the Crown of a person to fill this office, and the chapter had no right thus to fill it, and afterwards, as it now attempts to do, to raise the fact of the office being filled as an obstacle to the readiest and best mode of enquiring whether the office is regularly filled. The office being wrongly filled, cannot be considered so filled as to require the Crown's presentee to have recourse to a *quare impedit*; nor can it be contended that merely because one form of remedy exists another must be refused. In this cause the Crown has a right founded upon frequent exercise, no less than seventeen deans of Exeter having received their appointment from the Crown. From 1559 to 1839 there is not one instance till the present of the chapter having called in question the right of the Crown to nominate. But if it is doubtful who has the right of presentation, the Court will put that question in a train for decision, and no other course can be adopted for that purpose better than that of issuing a *mandamus*. It may be true that the chapter has always gone through the form of election, but that will avail nothing for the purposes of the argument, if they always elected the nominees of the Crown; and such in fact has been the case from 1559 to the present time. But the right of appointment in deaneries as in bishoprics, might have been changed since the reformation, and not one authority has been produced on the other side to shew that the right of election in the old deaneries is the same as it was before that period. It is clear, therefore, that there are two opposing claims of the right of appointment; then the most convenient way of deciding between them is by *mandamus*. A *mandamus* to restore is the true specific remedy for a person who has been wrongfully dispossessed. It is not denied, as a general proposition, that a *quare impedit* will lie for a deanery; but that does not shew that it will lie where the Crown does not claim *pleno jure*, but there is to be a subsequent election before the claim can be made. In the case of a bishop, the mere election does not confer the office. The person elected has nothing of the office in him. This case is now to be considered as if all that had been done in it was null and void; and a *quare impedit* cannot always lie for an ecclesiastical office; for if the Crown was to present, and before institution or induction, was to repeal the presentation, and thereof give notice to the ordinary, who nevertheless

^b Co. Litt. 95 a.

^c Fitz. Nat. Brev. 33; Bro. Abr. Quare Impedit, 56.

^d 1 Term Rep. 650.

inducted the first presentee, yet the Crown might present another person, for the church would not be full. In such a case, it is clear that a *quære impedit* would not lie, and such a case is the present. A *mandamus* is not always refused because there may be another remedy; it has been granted where there might have been an assize of office, for the simple reason that it is the more convenient remedy. According to the opinion of Mr. Justice Lawrence in *The King v. The Commissioners of the Bedford Level*,* it ought to be granted where, as in this case, no facts were in dispute, but the question was solely one of law.

Lord Denman delivered judgment.—In this case a rule has been obtained that a *mandamus* may issue to the defendants, commanding them to proceed to the election of the Rev. Mr. Grylls, as a canon of the said cathedral church, in order to qualify him for the appointment of dean of the said church, and then to proceed to elect him to that office. The situation of dean appears to have been created, and the office endowed, by the bishop, in the reign of Henry III. That was subsequent to a charter of King John, by which the chapter was authorized to elect the greater and the lesser canons of the cathedral. This deanery itself appears to be the last which had been founded before the dissolution of the monasteries. By the terms of the charter of foundation he was to be elected by the chapter, subject to the confirmation of the bishop. Subsequently it was provided that he was to be one of the canons, and a prebendary of the cathedral, and the practice has prevailed that he should be one of the canons residentiary. In this manner he has been in form elected by the chapter, subject to the confirmation of the bishop, who confirmed him, if all that had been done had been done regularly. The dean, thus elected, then took the oath to obey the orders of the bishop, who then took him to his stall, and he was inducted into and confirmed in his office. In the fourteenth and fifteenth centuries the bishops regularly collated the deans into office. In 1553 the Crown, for the first time, interposed its authority, and claimed to appoint the dean; but Edward the 6th died before the appointment thus attempted to be made was completed, and the accession of Mary changed the course of proceeding in these matters. In 1559 Elizabeth sent her mandate to elect a certain person therein nominated, a dean. The answer of the chapter was, that the members thereof could not by the statutes elect a dean who was not a canon residentiary; and they therefore prayed either that her Majesty would direct the election of a different person, or would grant a dispensation of the statutes. There are three other cases, of which no exact accounts have been preserved, and then we come to the year 1629, when Charles I. recommended for dean a prebendary, who was also resident. The person thus recommended was elected. In 1661, the office being vacant, Charles II. sent a letter recommendatory of

another person. The particulars of what then occurred are not before the Court. In 1671 Charles II. gave the appointment to Anstey, who was not a prebend. The letter recommendatory sent in that instance stated that the deanery belonged to the Crown. The bishop granted the letters appointing the person thus nominated by the Crown to the office of prebend; and Mr. Anstey was elected and instituted to the deanery. Fourteen elections have taken place since that time, and of the persons thus elected it appears that nine were strangers to the chapter, but on the nomination of the crown the bishop made them prebendaries. Such being the ancient and modern practice with regard to election into the office, the deanery became vacant in 1838, and the Crown made a presentation to the chapter, the members of which returned that they could not, by law, elect the person so presented to them, for that he was not a prebendary nor a canon residentiary of the cathedral. The crown then nominated Mr. Grylls, and suspended by the authority of a statute, the rule as to the prebendary declaring that every spiritual person upon collation, should be a prebendary or canon residentiary of such church to all intents and purposes, and so qualified to be elected dean of such church. Immediately after the passing of the act, namely, on the 12th June, Mr. Grylls was again appointed and was by such appointment qualified to be elected as if in fact he had been a canon residentiary. No step was taken on this intimation of her Majesty's pleasure, but on the 27th June the chapter elected the Rev. Mr. Lowe, who was a canon residentiary, to fill the office of dean, following the practice of ancient and modern times in the election of deans in every respect, except that of adopting the recommendation of the Crown. In this state of things the present rule has been applied for, and the Court has been desired to treat the appointment of Mr. Lowe as null and void, and to command the chapter to proceed to a new election, by first qualifying Mr. Grylls to take the office, and then by electing him into it. The appointment by the crown in virtue of the statute of last year, carries his qualifications with it; and the chapter cannot prevent his election to the office of dean on the ground that not being a prebendary or a canon residentiary he is not by the statutes of the chapter qualified to fill the office. This first step therefore having been taken away, the question is, whether it can now be followed up by the order of the Court, compelling the election of Mr. Grylls into the office of dean. The act of last year restored the law in this respect to what it had been before the 5 & 6 W. 4. What, then, are the rights on which Mr. Gryll's election has been disputed? They are the rights of the chapter. The members of the chapter asserted the right of choosing their own president. In making that choice they have followed the practice of ancient times; but the Court is now asked to say that all that has thus been done has been badly done, for want of the letters recommendatory of the Crown. It has been

asserted, in fact, that the right which in the most ancient times of the deanery, had been exercised by the bishop, is now transferred to the Crown. Such a transfer ought to be supported by clear proof, and in this instance, it is said to be borne out by Mr. Hargrave in his notes to Coke upon Littleton. His Lordship here read at full length Mr. Hargrave's observations, and the authorities therein quoted, and expressed the opinion of the Court, that that learned writer had been mistaken upon this subject. The statute of Henry 8th, which gave the appointment of bishops to the Crown, does not mention deans, and the right to appoint the one does by no means convey the right to nominate and appoint the other. No one would say, that a judge could, in such a case as the present, direct a jury to presume an act of parliament, on a matter which must have been the subject of legislative interference within two hundred and fifty years, there being no trace of any such legislative proceedings in the journals of parliament, in the proceedings of the courts of law, or in the works of text writers. Had such an act existed, there must have been some record of its existence. This then puts an end to the assumed right of the Crown in consequence of any act of parliament. Nor does the Court see that that right was better established by the existence of any ancient composition, or of a practice consequent upon such composition. But beyond all this it is clear, that if the Crown has the right now contended for, it has also the means in another way of enforcing that right. If the deanery had been a donation of the Crown, the letter recommendatory would have conferred at once the right to the office, without any intervening election, and a person afterwards wrongfully introduced into the office would have been a trespasser, and liable as such. If the deanery is in presentation, the well known remedy of *quare impedit* may be adopted. It is said, that the Crown may nominate, and that the chapter must elect. Yet the right to elect, and the form of election are denied to exist. Under these circumstances the Court does not see that the right of the Crown has been made out. But if it is still believed that the right exists, then it is clear that the Crown has other and better means of trying the right than by this writ of *mandamus*. The Court is therefore of opinion that the rule for the *mandamus* must be discharged.

The Queen v. The President and Chapter of the Cathedral Church of Exeter, T. T. 1840. Q. B. F. J.

Queen's Bench Practice Court.

SERVICE IN EJECTMENT.—MISNOMER.—APPEARANCE.—AMENDMENT.

An amendment in a declaration in ejectment in the christian name of the lessor of the plaintiff will not be allowed when the tenant has not appeared.

This was an action of ejectment. After service of the declaration on the tenant in

possession, it was discovered that by some mistake the lessor of the plaintiff had been described by the christian name of John, instead of that of James.

Lucus applied on behalf of the lessor of the plaintiff to be allowed to effect an amendment in the christian name. It was suggested, that no injury could accrue to the tenant, as no one had yet appeared to the action.

Williams, J., thought that the amendment, under such circumstances, could not be allowed.

Rule refused.—*Doe d. Street v. Roe*, E. T. 1840. Q. B. P. C.

THE EDITOR'S LETTER BOX.

We regret to find that the labour bestowed by a friendly correspondent at Manchester, cannot be made available. The remarkable case he has sent us appeared in our fifth volume, p. 201, (12 January 1833.) We are particularly obliged by his kind intentions.

We had at first intended to publish the letter of "One who has been an Articled Clerk;" but, as we have recently inserted a note on the same subject, we think it unnecessary at present to repeat the complaint. Although we are always willing to point out real grievances, our pages ought not to be too much occupied with the controversies of members of the same profession.

"An Articled Clerk" states, that he has served four years of his clerkship, and is now serving his fifth with a gentleman to whom he has been assigned, and he asks whether, "if he serve the last three months of the five years with his London agent, without any new assignment, such service will be included in the five years, so that he may, on the expiration of the time, be admitted?" There can be no doubt, that he may serve the agent of the attorney to whom he is assigned.

"Lex" has taken the trouble to report that in the case of *Doe d. Jones v. Wilkins*, at the last assizes at Wells, it was held, that "possession by a party, who came into the same in opposition to the landlord, on pretence of giving certain securities to his lessor, was bad," although the tenant, in very emphatic language, refused to go out.

We think that a diligent Articled Clerk is certainly entitled to a month's absence during the long vacation.

The plan proposed by C. P. Y. will certainly not be legal.

We are obliged by some points of information relating to the *Legal Almanac*, which we are preparing for publication at the commencement of Michaelmas Term.

The Letters on Mortgage Stamps; the Repeal of the Attorneys' Certificate Duty; and the alleged abuse of the Right of Advocates, are under consideration.

The Legal Observer.

SATURDAY, SEPTEMBER 12, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE BANKRUPTCY AND INSOLVENCY COMMISSION. No. I.

WE have been endeavouring for nearly ten years to obtain a Reform in the administration of the Bankrupt Laws, and we are not without hopes that it will now be speedily accomplished. Our readers will remember that we stoutly opposed the establishment of the Court of Bankruptcy, and never considered the act passed for this purpose a satisfactory settlement of the question. Still, however, to that measure we are at any rate indebted for clearing the way for a further one. The advantage of a great change of this description is, that it brings up to the surface the real state of things; the public mind is prepared, and we are thus enabled to legislate to much greater advantage.

We now propose, therefore, to consider the several changes which are proposed by the Bankruptcy and Insolvency Commissioners, and we shall for the most part give these recommendations in their own words.

In the first place, they propose a junction of the Courts of Bankruptcy and Insolvency. They then thus distinguish the laws relating to Bankrupts and Insolvents.

“The law relating to Bankrupts is confined to traders under certain conditions.

“The law relating to Insolvent Debtors, is applicable only to debtors, (whether traders or non-traders) who have undergone a certain imprisonment.

“The immediate object of the Bankrupt law is the equal distribution of the effects of traders, who cannot meet their engagements; its ordinary consequence is the release of such traders from all future liability of their persons, and after acquired property.

“The object of the law for the relief of Insolvent Debtors is the personal discharge of honest

debtors, prolonged imprisonment by way of punishment for the dishonest and fraudulent, and a fair distribution of their present effects, and future-acquired property, amongst their creditors.

“It appears to us, that there are defects in both these branches of the law, and that the provisions of each are inadequate to the several objects they have in view.

“The statutes relating to Bankrupts were originally enacted to meet cases of fraud for which the ordinary forms of the law did not afford effectual remedy, and were founded upon principles of extreme severity. By progressive alterations they have become more lenient, and have been extended to many classes of persons not originally included within their provisions.

“The Bankrupt Law provides indeed efficient means for the discovery of property, and the detection of frauds, but it is defective in provisions for the punishment of dishonesty; for, if the bankrupt fully discloses his transactions, and submits himself to the jurisdiction of the Court, (even at the last moment, and after a most litigious resistance,) his misconduct, however flagrant, cannot be visited by any direct punishment.

“On the other hand, the law for the relief of Insolvent Debtors affords no efficient means for the discovery of property, or the detection of frauds, but does afford (though to a very limited extent) an indirect power of punishing dishonest and fraudulent debtors by a remand to prison.

“There are thus two systems of law relating to debtors who cannot satisfy the demands of their creditors:—the one being confined to traders, comparatively deeply involved, whom it protects from personal restraint; whilst, by the other, those who have contracted debts to a smaller amount must undergo imprisonment; by the one, the debtor obtains an absolute release, and by the other, a release only of his person; by the one, prompt and effectual powers for the collection, the discovery, and the seizure of property are afforded, and by the other, very inefficient means; by the one, there is no power to punish admitted frauds, and by the other, such power is given, (though to a

very limited extent;) the one operates in *invi-tum*, whilst the other may be, and can only effectually be put in force by the voluntary act of the debtor.

"It has been taken for granted that those who generally pass under the operation of the Act for the relief of Insolvent Debtors, are persons, not being traders, who have contracted debts from improvidence, and that those who actually come under the operation of the law of Bankruptcy, are persons who, by the inevitable vicissitudes of mercantile affairs, are reduced to a state of insolvency. The greater proportion, however, of those who pass through the Insolvent Debtors Court are persons *not* contemplated by the Act for the relief of Insolvent Debtors, but are persons of the description contemplated by the law of Bankruptcy, only trading on a smaller scale than those who are usually made bankrupts.

"We see no grounds for supposing that debts are contracted more improvidently by the small than by the more extensive traders. We find that about two-thirds of the persons who petition the Insolvent Debtors Court for relief, are persons who come within the policy of the law of Bankruptcy, and both, as regards their own protection, and the remedies of their creditors, are as much entitled to be brought under the operation of that law as the comparatively richer trader.

"It appears by the gazette, that in the year 1839, there were 3,691 petitions filed in the Insolvent Debtor's Court; and that about two-thirds of the whole number were the petitions of persons being traders, within the meaning of the Bankrupt Law.

"The numbers making up the total of 3,691, were as follows:—

Non-traders	1,056
Traders	2,388
Doubtful	247

Total..... 3,691

'Those called 'doubtful' were composed as follows:—

Farmers	65
Attorneys	40
Auctioneers	20
Surveyors	14
Surgeons	42
Master-mariners	12
Artists	10
Market-gardeners	19
Agents	2
Cowkeepers	3
Schoolmasters	15
Accountants	5

Total..... 247"

The Commissioners next point out the impolicy of that part of the Insolvent Law which affects the future property of the Insolvent.

"The future liability of all Insolvent Debtors is, in our opinion, a most unjust and impolitic

law:—The Insolvent Law, after interrupting a man in his business, taking all his property, imprisoning him until his place in business is occupied, and then turning him out destitute, a proclaimed insolvent, and unworthy of trust, nevertheless expects him at some future time to acquire property which he is to give up for distribution amongst his creditors. The practical result is, that he makes no exertion beyond supplying his daily wants, and too frequently becomes a permanently degraded character; his family are brought up ill; hence society loses, and the creditors do not gain. An honest, industrious man, who has been discharged as an insolvent, beginning anew without capital, with diminished chance of obtaining credit, with broken spirits, and health probably impaired, necessarily labours under such disadvantages in competition with others having capital and credit, that he must be considered as a successful man if he can barely get his living, and bring up a family. Great traders, on the contrary, are not subject to this regulation, for they are *always* made bankrupts, and are discharged from future liability, although such men often are able afterwards to acquire property, which insolvent debtors, being in a lower class, rarely are."

They then propose that any person may make a voluntary cession of his property to his creditors. We call attention to the part we print in italics. It will be seen at once that the proposed alteration is a very extensive one.

"If a debtor be honest but insolvent, and is willing to divide his property equally amongst his creditors, he has, by law, no means of carrying his wishes into effect, unless all his creditors consent. If he offer a composition, the arrangement may be defeated by any one creditor. If an action be brought against him by one of his creditors, he must either make an unjust defence, or else, by allowing judgment to go by default, enable that creditor to obtain a preference over the other creditors.

"A debtor who is willing to divide his property may declare himself insolvent, or commit any other act of bankruptcy, and make himself (if a trader) amenable to the bankrupt law. But as long as a debtor is possessed of property a creditor is averse (unless with the object of benefiting the debtor, or of preventing a preference to other creditors) to sue out a fiat of bankruptcy against him, or to charge him in execution, so as to enable the debtor to divide his property under the Insolvent Debtors' Act. Execution after execution may be sued out against his property; a few creditors may be paid in full, together with heavy costs, and the great body of the creditors may be left without payment of any portion of their debts, much exasperated, in all probability, against the debtor, who is stripped of every thing, and not being discharged from his debts, is unable to obtain credit, or the means of supporting himself and family.

"A debtor cannot be compelled to cede his

property for the benefit of his creditors except by an expensive suit, and charging him in execution. The debtor may commit an act of bankruptcy when he pleases, unknown to any person but a servant, or confederate, and by that means the debtor alone can make use of it, when it best suits his convenience; or, if not a trader, and not within the scope of the bankrupt law, the debtor may, through the medium of a friendly creditor, real, or fictitious, surrender himself to prison at such time as he thinks most advantageous to himself.

"A debtor is able with much greater facility than formerly to favour a particular creditor, to the disadvantage of other creditors. By the statute passed in the 2d and 3d year of your Majesty's reign, c. 29, executions against the goods of a bankrupt *bond fide* executed or levied before the date of the fiat are to be deemed valid, notwithstanding a prior act of bankruptcy, if the party levying the execution had no notice thereof.

"Since this enactment, cases of fraudulent preference have become more numerous. An execution previous to the fiat of bankruptcy founded upon a judgment entered up on a warrant of attorney, (though given by way of fraudulent preference) is almost certain to prevail in favour of the execution creditor, to the exclusion of the other creditors.

"Several instances have occurred, in which the whole of a debtor's property has been seized under the most suspicious circumstances, by a relative or a friendly creditor, and the general creditors have been deterred from questioning the validity of the proceeding, by the exceeding difficulty of unravelling such cases, and the risk of heavy costs.

"We have now stated to your Majest'y some of the principal defects in the two branches of law relating to bankrupts and to insolvent debtors, and we are of opinion that they cannot be effectually removed, until the distinction which now exists, regarding the persons deemed to be subject to the operation of these respective branches of law, be done away, and the rules of the discharge from future liability, both in person, and after-acquired property, be extended to meet all cases of insolvency coming under the operation of the law, and until the equitable division of the property of debtors who are in a state of insolvency, or unable to meet their engagements, be rendered more certain, more speedy, and considerably cheaper.

"We are of opinion that, not only should debtors be allowed, but that inducements should be held out to them, to make a cession of their property at such period of their difficulties as will best ensure equal justice to all their creditors.

"*We think that a creditor, having delivered the particulars of his debt to the debtor, and having demanded payment, should, upon filing an affidavit of these circumstances, and that his debt is justly due and remains unpaid, be entitled to a summons for the purpose of compelling the appearance of such debtor, and of ascertaining from him, upon his oath, whether he believes*

he has a good answer to the demand, or to any, and what part thereof.

"The object is, that where a debt claimed, or any part of it, is clear and indisputable, and the debtor does not pay the admitted sum into Court, or to the creditor, or give security to pay within a reasonable time, such default should be taken as proof of insolvency, and such debtor should immediately become amenable to the law for the equitable distribution of his property, if his creditors desire such a course to be adopted. But if, instead of admitting the validity of the debt on which he is summoned, the debtor believe he has a good answer to the demand, and will swear to such belief, the present law will take its course, and neither the person or property of the debtor will be interfered with until the creditor shall have established the debt, and obtained judgment. It is obvious that such a proceeding would be both very cheap and very expeditious, and at the same time more just towards debtors than the proceeding by arrest on mesne process was; for a debtor, when arrested, must have found bail or gone to prison, without having afforded to him any opportunity of denying a claim to which he might have had a just defence."

This proposition, we have no hesitation in saying, is the most important one in the report.

THE LAW OF JOINT STOCK COMPANIES.

THE following case comes under the head of No. V.—"Actions and Suits by Joint Stock Companies." See also the last article, No. VII.

This was an action by a banking copartnership. The declaration commenced, "James Robert Spiller, who has been duly nominated and appointed one of the public officers of the Northern and Central Bank, &c. complains," &c. The defendant demurred specially, on the ground that it did not appear in or by the declaration that the plaintiff was a member of the copartnership, resident in England, and duly registered according to the provisions of the 7 Geo. 4, c. 46, s. 4. *Martin*, in support of the demurrer.—The 7 Geo. 4, c. 46, s. 4, regulates the copartnership of bankers. By the 9th section it is enacted, "that all proceedings at law or in equity, to be commenced or instituted for or on behalf of any such copartnership, for recovering any debts, or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may be com-

menced or instituted, and prosecuted in the name of any one of the public officers nominated as aforesaid, for the time being, of such copartnership, as the nominal plaintiff for or on behalf of such copartnership." The 4th section, which relates to the mode of nomination, requires that an account or return shall be made out according to the form contained in the schedule, wherein shall be set forth the true names, title, or firm of such corporation or copartnership, and also the names and places of abode of all the members of such corporation or of all the partners engaged or concerned in such copartnership, and also the names and places of abode of two or more persons being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of officer or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued as thereafter is provided, and every such account or return shall be delivered to the commissioners of stamps, &c. *Sed per Curiam*.—The declaration is clearly sufficient. In actions by assignees of bankrupts, it is not necessary to state in the declaration that they were elected by the creditors. Judgment for the plaintiff. *Spiller v. Johnson*, 8 Dowl. 368.

In the following case, it was decided that covenant does not lie against the chairman of the board of directors of a Joint Stock Company, not incorporated by act of parliament, upon a deed under the seal of a former chairman.

An action of covenant was brought against the defendant as chairman of the board of directors of the British and American Steam Navigation Company, for the breach of a contract under seal made on the 26th Nov. 1836, between the plaintiff and "one Isaac Solly, for and on behalf of the said British and American Steam Navigation Company, he, the said Isaac Solly, for the time being, acting as chairman of the said directors of the said company." On general demurrer to one of the defendant's pleas, it was objected by — *Martin* for the defendant, that, though it might be taken, that, on the day of the commencement of the action (the 23d April 1839) the defendant filled the office of chairman of the company, yet it no where appeared upon the face of the declaration that he was a member of the company on the day the contract was entered into; nor did it ap-

pear that Solly had any authority to bind the company (who were not incorporated by act of parliament) *by deed*. *Shee*, Serjt. for the plaintiff.—The contrary not being alleged, the Court will assume that Solly had due authority to contract by deed so as to bind the company. *Tindal*, C. J.—Whether or not the deed of Solly would be the foundation of an *assumpsit* by the defendant, (see *Berkeley v. Hardy*, 8 D. & R. 102; 5 B. & C. 355) I give no opinion; but there is nothing upon the face of this record to shew that he can be liable in this form of action. The rest of the Court concurring, judgment for the defendant. *Hull v. Bainbridge*, 1 Scott, N. S. 151.

THE LAW RELATING TO MAINTENANCE.

A TRIAL having taken place at the last Winchester Assizes, involving a charge of maintenance against two persons, one of whom was an attorney, it has been suggested that we should give some notice of the case. It may be useful, in the first place, to state the general law on the subject, and then advert to the circumstances of the recent trial.

Maintenance [*manutenentia*] is the unlawful taking in hand, or upholding of a cause or person. The term is also applied to the buying or obtaining of pretended rights. It is either *ruralis*, in the country; assisting another in his pretensions to lands, by taking or holding the possession of them; or stirring up quarrels or suits: or it is *curialis*, in a court of justice; intermeddling in a suit depending in court, by assisting the plaintiff or defendant with money or otherwise.

An attorney may lawfully prosecute or defend an action in the court wherein he is an allowed attorney, in behalf of any one by whom he shall be specially retained; and may assist his client by laying out his own money for him to be repaid again, and also may maintain an action against him by virtue of such a retainer, without any special promise.^a

It is said also, that attorneys may justify such maintenance in other courts wherein they are not allowed attorneys, but that they cannot have an action for the money so laid out without a special promise, and that they are more justified by a general retainer to prosecute for another all his causes, than if they were not retained at all; and it is certain that they ought not to carry on a cause for another at their own expense, with a promise never to expect a repayment. And it seems justly

^a 13 H. 4, 16. Keilw. 50. Hob. 117. 2 Inst. 564. 2 R. Abr. 116 F. Main. 21.

questionable, whether solicitors, who are no attornies, can in any case justify the laying out their money at another's suit.^b

In debt upon an obligation the condition was if the defendant paid all monies that the plaintiff had expended in a suit between A. and B., wherein he was attorney, and all that he should expend in the prosecution of the suit, that then, &c. To this the defendant demurred generally.

It was contended that the bond was void, for the condition was against law, being for maintenance : and that this was maintenance, appeared from 1 Inst. 363, b., where one maintaineth the one side, without having any part of the thing, it is maintenance ; and there was no difference between paying money towards it, and giving bond to pay it.^c On the other side it was argued, that the bond was good ; for it was lawful for an attorney to lay out money for his master, and he to pay him again ;^d and if so, then he might take his promise, or his bond for it ; to which the court assented.^e Where there was a certain sum promised, perhaps it might be unlawful ; but if it were for his due fees, it was otherwise.^f

Per Rolfe.—That which an attorney doth by his client is maintenance ; but it is lawful maintenance. But here it is objected, that the obligors are strangers to the suit. If the party be a poor man, and the attorney will not trust him, certainly he may get his friends to be engaged with him for the money he shall lay out ; for, however, it cannot be denied but part of the condition, viz., to pay what he had already laid out, is good enough ; and part being good, and part void, it should not be void for all, unless it were where a bond is made void by statute ; and that difference is taken.^g The court inclined to think that it was maintenance in the strangers ; for else, they said, the statutes of maintenance would be easily eluded and people might maintain very securely by giving bond, which would be altogether as great an evil as laying out money ; and they the rather inclined to it in this case, because here the party to the suit was not bound with them, but they were three strangers.

Mainard, Amicus Curie, said, that it had been adjudged maintenance, for a man to speak to a counsel, or an attorney, to encourage the suit wherein he had no interest ; and that the master might maintain for the servant, but not the servant for the master. *Sed Curia advisare vult.*^h

So the plaintiff had been solicitor for the defendant in several suits, and an obligation was given by three others to pay all such sums of money as were or should be laid out by the

plaintiff in the several suits depending for the defendant, wherein the defendant was solicitor, &c. The plaintiff declared upon this obligation, and the defendant demurred.

It was argued for the defendant, that this obligation was void, being for maintenance ; and though it had been objected, that part being given for what was already due was lawful, and so, however, it should be good for that ; yet it was argued by *Broume*, that the whole taken together was maintenance ; for the securing of what he had laid out, and what he should, gave life and spirit to the attorney to sue, and so according to 1 Inst. 363. b. a bearing up, or upholding, of quarrels and sides ; and whereas it had been objected, that it might sometimes be an act of charity to be security for a poor man, because it might be a means to help him to the recovery of his right ; as to that, the law had provided a remedy for him, for he might be admitted in *forma pauperis* ; and therefore, upon the whole matter, this seemed to be a supporting of quarrels, and was an encouragement to one part and a discouragement to the other.

Turner, pro quer, argued as before, and said farther, that it did not appear here that any maintenance was committed ; and so it was not reason the party should suffer, *non officit conatus nisi sequatur effectus*. But *Vaughan* answered to that, that it was true the party could not be indicted for maintenance till it were committed, no more than he could for murder ; but yet, if a bond were given to maintain or to kill, certainly the bond would be void, though the acts never ensued ; and he said it would be hard to distinguish, in point of maintenance, between giving of money and giving security for it.

Windham.—As the defendant hath pleaded, it seems to be something strong against him ; for there is a difference when the condition is to do a thing that is plainly unlawful in itself, *primò facie*, as to kill a man, &c., and when it is to do a thing that may be either lawful or unlawful, according to the circumstance of the thing, as it is here : so there may be lawful maintenance : and *non constat* here, whether or no the obligors were not relations of the party, or perhaps the party might be lessee and they might be reversioners ; and therefore the defendant should not have demurred, but should have pleaded that the bond was for maintenance, and then it had come properly on the other part to have shewed how and upon what account they might lawfully maintain ; but now the defendant had tied the plaintiff up by his demurrer, that he could not come in to shew the matter.

Atkins took a difference, that if the suit were ended, any person might be security for the fees and charges expended, but not while the suit was depending ; for the security for what was laid out did encourage the proceeding in it, and the judges ought to discountenance anything like maintenance. *Non bene ripis creditur*.

It was agreed by all the judges, that the client himself might give the attorney bond for

^b 3 Mod. 98. Vide. 2 Danv. 487. 12, 13, 14. Winch. 52. 1 Jon. 208. C. Car. 159, 194. Con. C. Eliz. 415, 459, 760. Moor, 366. 2 Abr. 114, 115.

^c 42 Edw. 3, 6, b. Bro. Obligation, 11.

^d 2 Inst. 564.

^e 2 Cro. 520. Hob. 67, 117.

^f Style, 134.

^g Hob. 14.

^h Hil. 24 Car 2, 1672. Freeman. 71.

his fees; or that, after the suit is ended, any body else might be bound with him for security of what was laid out. *Sed Curia advisare vult.*

Afterwards, in the same term, *Vaughan*, Chief Justice, delivered the opinion of the Court, that judgment ought to be given for the plaintiff, because the defendant demurring generally, it cannot appear whether the maintenance was lawful or unlawful; and it might be, that these persons were relations that might lawfully maintain; and *nullum iniquum in jure præsumitur*; and besides he ought to have pleaded performance of that part which was lawful; for it was lawful to be security for what had been laid out before; for though it was a question formerly, whether an attorney might lay out his proper money for his client, yet now it was made clear that they might, since the statute 3 Jac. *Ideo per curiam jud. pro quer.*¹

In the recent case to which we refer, Mr. *Erle*, Mr. *Crowder*, and Mr. *Smirke*, were counsel for the plaintiffs; and Mr. Serjeant *Bompas*, Mr. *Butt*, and Mr. *Carrow*, for the defendants.

Mr. *Smirke* opened the pleadings. The plaintiffs were Samuel George Pechell, James Lyon, Joseph Martineau, and Jervoise Clarke Jervoise, magistrates of the county; and the defendants were John Webster Watson and Thomas Rodgers. The declaration stated that the defendants, intending to injure and damnify the plaintiffs, and to put them to great vexation and expense, unlawfully, maliciously, and without reasonable and probable cause, and without having any interest in the suit, did advise, procure, instigate, and stir up one Richard Hearsey, then being a pauper, to commence and prosecute an action of trespass against the said plaintiffs, together with certain other persons, and in consequence of such instigation, the said Richard Hearsey did, without reasonable or probable cause, commence and prosecute the action, and that the present plaintiffs obtained judgment against the said Richard Hearsey, and were put to an expense of 600*l.* There were several other counts in the declaration, one of which charged the defendants with carrying on an action against the plaintiffs in the name of Sarah Osborne.

The defendants pleaded the general issue, Not guilty.

Mr. *Erle* said the plaintiffs were four magistrates in this county. The two defendants were Mr. Watson, lately bearing the name of Wood, and the other defendant was Mr. Rodgers, an attorney residing in Devonshire Square, in London. This action was founded upon the law against maintenance, a law of a very important and salutary nature. Litigation was often an extreme evil, causing great anxiety and expence, and much ill-will. The law, therefore, had declared that no man, except those really interested, had a right to stir up or incite to litigation, or to foment quarrels, or bring about law suits. It also provided

that if an action was begun, and litigation going on, no stranger to that litigation, without having an interest therein, had a right to furnish money, and be the means of carrying on such law suit. In either respect the stranger would be guilty of maintenance, and liable to be punished; or if by reason of his so interfering he had occasioned damage to another, he was bound to make that party compensation for that damage. That was the general nature of the law against maintenance. There were some exceptions where the parties were related to each other; and there were certain *dicta* that it might be justifiable when the parties were actuated by pure charity to afford means to support the cause of a poor person—it might be justifiable on the score of charity. But there was an enactment that where a poor person was unable to pay the expence, he might come into Court in *forma pauperis*, and might carry on his law suit without paying any fees; but no man was entitled to maintain an action in *forma pauperis* unless he could procure some barrister to sign a statement that, in his belief, the pauper had good cause of action. But, independent of that, there were these *dicta*, that where parties were actuated by charity and charity alone, they would be justified in giving money, and rendering their assistance. When the facts were brought before the jury, it would be perfectly clear that the present defendants had no pretence for saying that they came within this exception. By their pleadings, the defendants had only denied the fact of their having been guilty of maintenance, and had not pleaded any justification.

The facts of the case, as proved at the trial, are sufficiently stated in the summing up of the learned judge.

Mr. Justice *Coleridge*.—The fifth count was not proved, and therefore might be dismissed from their consideration. The other four counts might be divided into two, as applying to the actions brought by Hearsey and Osborne respectively. To enable the plaintiff to recover, the jury must be satisfied that the defendants maliciously, and without reasonable or probable cause, and without having any interest in the subject-matter of the suit, incited the parties to bring their actions. Assuming that it had been done maliciously, they would consider whether or not the parties had any interest in the suit. But whether they had reasonable or probable cause was a point on which they would receive instructions from him. It was not necessary for him to lay down any precise definition of the offence of maintenance. Maintaining an action in the ordinary meaning of the word was not enough. If they were satisfied that a person having no interest whatever in the suit, maliciously, and with a view to aggravate the defendant, maintained with money, or incited a party to bring a suit, that would be sufficient to prove the allegation in the action; but there were exceptions. You might give advice to a party *bonâ fide*, with whom you were connected; and if a man thought another injured, or that he

was entitled to some property, he might assist him with money or advice; or if they had a real interest in the suit, they might take their own part in it.

It was necessary to observe, that though this was a charge against two persons, it by no means followed that both were innocent or guilty. The situation of Mr. Rodgers, the attorney, appeared very different indeed from the situation in which Mr. Watson stood. They would first consider the case of Mr. Watson. He was introduced to the parties in consequence of his cook being the sister of Sarah Osborne. Mr. Watson was a person entertaining strong opinions upon the policy of the New Poor Law. Mr. Watson was introduced to a London attorney, who was a stranger to him, but brought to his notice by the fact of his having a feeling in common against the Poor Law, and the plaintiffs say that Mr. Watson's conduct was more like that of a man who was a principal in the case; and after the thing was set afloat, Hearsay took little or no part in it; he was an illiterate person, incapable of giving instructions, and apparently taking no interest in the case; and then it was said that Mr. Watson got copies of instruments prepared and revised, and they gave different conversations between him and other persons, one of whom told him he was the whole and sole origin of the proceedings. That was the outline of the evidence as to his being the instigator, without reference to motives.

On the other side they said, it was very true that he thought the man an injured man, but it never occurred to him to bring an action; but that the man being determined to go to law, and to go to London for the purpose of seeking out an attorney, he dissuaded him as much as he could from such an undertaking; but upon the man persisting, he advised him to put it into the hands of a man who would do him justice, and he sent him with a letter to Mr. Rodgers, and it appeared satisfactorily that there was no previous acquaintance between them; but Mr. Rodgers came down, and was told it was true, and Mr. Watson from this time rendered his assistance, taking an active part, but not being the instigator, as they asserted. That they would determine, bearing in mind the evidence. Did Mr. Watson or not instigate the action? If not, all fell to the ground, and he must assume for a moment that they were satisfied he did.

Then, in the next place, *did he do so without having any interest?* With regard to that it was suggested that he might have a common interest to see his neighbour have justice done him; and next, that being a member of the union, he might be said to have even a pecuniary interest—something almost of a personal interest—in seeing that the suit was properly conducted. He must say he did not think either of those kinds of interests satisfied what was here required. When they spoke of a party having an interest, the party ought to have something more of an individual interest, and in his opinion Mr. Watson had not an in-

terest in this suit at all. He had no connexion with the party; if this was sufficient there would be no such thing as maintenance.

Then did he do this *without reasonable and probable cause?* There were two grounds for assuming there was a reasonable and probable cause, and he was to give his opinion after they had found the facts. First, it was said there really and truly was an intention of discussing whether Hearsay had a good title to the cottages, and that they seriously believed Hearsay had a good cause of action, and that the parish officers had no right to turn him out; that undoubtedly could not be said to be without probable cause; for they would have to say first what was their opinion on the facts. They said, that in the minds of these persons they had no right to be turned out. The other side said, that it was the well-known poor-house where they put any one who required parochial relief; that the parish did repair from time to time quite enough to shew who were the real owners, and it was contended that it was parish property. Now, that would not be enough; but was it parish property in the knowledge of all parties? That it was a mere pretence for supposing these parties actually thought seriously it was their own.

But they must not look only to that—not whether there was reasonable and probable cause in the minds of those ignorant persons, but in the mind of Mr. Watson. In discussing that point, it must have reference to the degree of knowledge. There might be circumstances which might convey to a man a notion that there was a reasonable and probable cause. They must always look to the situation of the parties. Was Mr. Watson in a situation in which he had the full means of knowing that this was the poor-house? If they should be of opinion that he had that knowledge, then there was no reasonable or probable cause for the action. But the defendants said the warrant was had in point of form. Whether good or bad, it did not appear that Mr. Watson's proceedings were affected by that warrant; if they were of opinion, on the merits, that this was not a *bond fide* claim, he should say it was not such reasonable and probable cause as against Mr. Watson.

Then they were to see whether Mr. Watson was actuated by *malicious* motives. It was often said that from the absence of probable cause the jury would be justified in inferring malice. So far as regarded these magistrates, it did not appear that Mr. Watson knew them; but if a party, from an indirect cause, instigated a course of proceeding which he must know must harass and vex a person, that would be sufficient evidence of malice. Mr. Watson had a strong feeling upon the question of the Poor Law, and upon the proceedings taken upon it; and then this action was most improperly brought against ten defendants, instead of against these four magistrates, or against the parish officers. There certainly was an impression in his mind that there had been injustice.

Then, as regarded an attorney, no one ever

dreamt of bringing an action against an attorney for having brought an action, if he conducted himself fairly to his own client. Mr. Rodgers was living in London, not near these persons; he was applied to by a man of whom he knew nothing; but they had a common feeling upon the Poor Law. In the course of his business he brought this action. There was a petition to the House of Lords, which ought not to prejudice Mr. Rodgers's case to day. It was in his favour to shew that he did attempt to get redress in the House of Lords. They would ask what he really thought. Suppose he was a low attorney, and had two good actions thrown in his way, and thought he had got the magistrates on the hip, that did not shew malice. He must confess he did not think there was a strong pressure of testimony against Mr. Rodgers. Then came the second count as to maintenance, the law upon which he had already explained to the jury. If they should find a verdict for the plaintiff, in order to avoid further litigation, he should recommend them to divide the damages, giving some small amount on the first count, and the substantial damages on the others.

The same inquiry would also be gone into as regarded the action brought by Sarah Osborne. They would have to consider this question. If they were of opinion that there was no instigation or no malice, then the case of the plaintiffs fell to the ground on that count; or if they were of opinion there was no malice, the second count fell to the ground. If they were of opinion that the plaintiffs were entitled to a verdict, then came the question as to damages, and it seemed to him that the plaintiffs were entitled, with one exception, to be indemnified for the expenses to which they had been put, and that exception would be the 91*l.* for the proceedings on the rule for security for costs.

The jury having retired to consider their verdict, the Court was adjourned to the Judge's lodgings, and the following verdict returned:—"We find Watson guilty on all the four counts, and Rodgers not guilty. Damages 560*l.*, less the 91*l.*; being 469*l.* on the second count, and 40*s.* on the first and third count; and for the defendants on the fifth count."—*Pechell and others v. Watson and Rodgers*. Winchester Summer Assizes, 1840.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No XVIII.

SOLEMNIZATION OF MARRIAGES.

3 & 4 VICT. c. 72.

An Act to provide for the Solemnization of Marriages in the Districts in or near which the Parties reside. [7th August, 1840.]

4 G. 4, c. 76. 6 & 7 W. 4, c. 85. 7 W. 4, and 1 Vict. c. 22. *Certificate of notice not to be granted for marriage out of the district where the parties dwell, except as herein after enacted.*—Whereas by an act passed in the fourth year

of the reign of King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriage in England," it is provided, that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever: And whereas by an act passed in the seventh year of the reign of his late Majesty, intituled "An Act for Marriages in England," provision is made for marriages intended to be solemnized in England, after notice given, according to the forms authorized by the last-recited act, which act has been explained and amended by an act passed in the first year of the reign of her present Majesty: And whereas it is expedient to restrain marriages under the said act of his late Majesty from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building, wherein, under the provisions of the said act of his late Majesty, as explained and amended by the said act of her present Majesty, marriage is solemnized according to the form, rite, or ceremony the parties see fit to adopt: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, shall not be within the district wherein one of the parties shall have dwelt for the time required by the said act of his late Majesty, except as herein after is enacted.

2. *In what case marriage may be solemnized out of the district in which the parties dwell.*—And be it enacted, that it shall be lawful for any party intending marriage under the provisions of the said act of his late Majesty, in addition to the notice required to be given by that act, to declare at the time of giving such notice, by indorsement thereon, the religious appellation of the body of christians to which the party professeth to belong, and the form, rite, or ceremony which the parties desire to adopt in solemnizing their marriage, and that, to the best of his or her knowledge and belief, there is not within the district in which one of the parties dwells any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage; and after the expiration of seven days or twenty-one days, as the case may require, under the said act of his late Majesty, it shall be lawful for the superintendent registrar to whom any such notice shall have been given to issue his certificate, according to the provisions of that act; and after the issuing

of such certificate the parties shall be at liberty to solemnize their marriage in the registered building stated in such notice: Provided always, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the truth of the facts herein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage

3. *Form of notice.*—And be it enacted, that the additional notice hereinbefore authorized to be given may be according to the form in the schedule to this act annexed, or to a like effect.

4. *Persons making false declarations guilty of perjury.*—And be it enacted, that every person who shall knowingly and wilfully make any false declarations under the provisions of this act, for the purpose of procuring any marriage out of the district in which the parties or one of them dwell, shall suffer the penalties of perjury: Provided always, that no such prosecution shall take place after the expiration of eighteen calendar months from the solemnization of such marriage.

5. *Provision as to marriages of members of the Society of Friends, and Jews.*—Provided always, and be it enacted, that, notwithstanding any thing herein or in the said recited acts or either of them contained, the Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may lawfully continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively, after notice for that purpose duly given, and certificate or certificates duly issued, pursuant to the provision of the said recited act of his late Majesty, notwithstanding the building or place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell.

6. *Act may be amended this Session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

THE SCHEDULE TO WHICH THIS ACT REFERS.

I, the undersigned and within-named *James Smith*, do hereby declare, that I, being [*here insert a member of the Church of England, a Roman Catholic, Independent, Baptist, Presbyterian, Unitarian, or such other description of the religion of the party*], and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite, or ceremony of the [*Roman Catholic Church, Independents, Baptists, Presbyterians, Unitarians, or other description of the form, rite, or ceremony the parties state it to be their desire to adopt*]; and that to the best of my knowledge and belief there is not within the superintendent registrar's district in which [*I dwell*], or [*in which the said Martha Green dwells*], any registered building in which marriage is solemnized

according to such form, rite, or ceremony; and that the nearest district to [*my dwelling place*], or to [*the dwelling place of the said Martha Green*], in which a building is registered wherein marriage may be solemnized according to such form, rite, or ceremony, is the [*here insert the name by which the superintendent registrar's district is designated*]; and that we intend to solemnize our marriage in the registered building within that district known by the name of [*here insert the name by which the building has been registered*]. Witness my hand this tenth day of August, one thousand eight hundred and forty.

(Signed) *James Smith.*

[*The Italics in this schedule to be filled as the case may be.*]

REPEAL OF THE ATTORNEYS' CERTIFICATE DUTY.

Mr. Editor,

At a time when the hand of innovation is recklessly pruning away the branches from which, in days of yore, the lawyer gathered a competent subsistence—when our tables of fees have been sapped to mere skeletons—and when continued peace has dissipated that necessity which in former times urged the state to commit acts of injustice, it becomes not less the duty than it is the interest of every practitioner, to raise his voice against the continuance upon him of a tax which is equally absurd and unjust. The attorneys' certificate duty is what I allude to, and I am sorry to find its obnoxiousness less frequently commented upon by your journal of late than formerly.

I have called the imposition of the certificate duty absurd; and who will deny the absurdity of a government arbitrarily selecting one of the most necessary branches of intelligent industry,^a and prohibiting its exercise except on payment of a very considerable annual sum of money; and the same government continually expressing its "delight in honoring" the same profession, by promoting its members to stations requiring eminent abilities and virtue?

It is but right in a government to retain to itself the power of granting periodical certificates of competency and fitness, where duties as important to its citizens as those of the attorney are to be exercised. This the advocates for repeal admit, and, I think, would in general cheerfully submit to; it is only of the heavy duty against which complaint is made.

And this I have called unjust. I should believe myself justified in calling it so merely from an abstract consideration of the principles it involves. But, in the present case, it is likewise unjust on account of its partiality; for no class of society ought to be called upon to contribute to the expenses of the state more than its true *quota*, according to its means and

^a I here speak of lawyers comprehensively and as a class, in which I think myself justified. O.

circumstances. This, I think, is so obviously true, as to produce intuitive conviction of its justness, on the very mention of it; and, according to it, there is no reason why the medical faculty and the clergy should not (if any profession is to be taxed) each be assessed upon a scale at least as heavy as that of the attorney. Yet the attorney alone, whose present character and whose calling may fairly challenge comparison with either of those of the professions just named,—he alone is subjected, in the use of his skill, to the heavy and partial grasp of annual taxation. It is, however (for reasons sufficiently obvious), inconsistent with the principles of sound political economy to tax the exercise of any profession; and therefore our object ought to be, as it really is, not to introduce others into the Stamps and Taxes Office, but to get out of it ourselves.

This end is, I think, fairly within the reach of our united efforts; and we have now growing facilities for unity of effort not formerly available. The various legal societies now rapidly extending themselves in different parts of the kingdom could hardly direct their labours for the respectability and independence of the profession to a more useful and promising subject than the repeal of the attorneys' certificate duty; and we are abundantly represented in Parliament by men who sufficiently sympathise with us, both from identity of interest and of pursuit. Let us therefore stimulate their eloquence in our behalf by petitions; and let us do this early—at the earliest period of the next Session of Parliament. And to this end let the officials of the said societies be put into communication with each other, in order that simultaneousness and universality of petitioning may be promoted; for these are absolutely necessary. In union alone is our strength. And, in conclusion, I will venture to say, that it is only requisite that all should unite whose wishes and interests are opposed to it, to sweep away for ever this relic of the tyranny and injustice of the rulers of former times.

OMEGA.

[We have called the attention of our readers to this subject times out of number; and are not only willing, but in duty bound, to continue the theme. Our correspondents will do well occasionally to send us suggestions for keeping the matter alive, and discussing it briefly in all its bearings.]

By the last returns, it appears that no less than 85,000*l.* a-year is paid under this impost, exclusive of the stamps on articles of clerkship and admissions, which, we believe, amount to an equal if not a greater sum. *Ed.*]

ALLEGED ABUSE OF THE RIGHT OF ADVOCATES.

I differ from "*Lex*," *ante*, p. 279, in the opinion expressed by him, that the feeling of the profession is enlisted against him upon this question. If it be so, the feeling is founded in error, for the law has, I submit, pretty clearly settled the point.—I admit that 'tis the advocate's "duty to make the best defence in his power;" but this duty is controuled by the duty which he owes to the law, namely,—not to obstruct its pure administration. The advocate may enforce anything for his client, and give it in evidence, *it being pertinent to the issue*, and per Mr. Justice Bayley, in *Hodgson v. Scarlet*, 1 Barn. & Ald. p. 241, *no mischief can ensue in allowing the privilege to this extent*. If it be impertinent, he is liable to fine, *pro stulte loquio*, [2 Inst. p. 123.—5. Bac. Ab. p. 321,] or to imprisonment, for beguiling the Court and the party, [3 Edward I. c. 28. 5th report Criminal Law Commissioners.]

The advocate is also liable to an action for using language injurious to private character *without reasonable or probable cause*, [1 Bar. & Ald. p. 232. See also N. (6.) p. 245.—4 Bar. and Cr. p. 473.] Justice can be purely administered only by the unobstructed development of the truth. The rules of special pleading are essentially calculated to promote this object, by which each question to be tried is reduced to one point or issue. In Courvoisier's case the issue was, "guilty or not guilty." Let us suppose that the counsel for the prosecution remarked that, "foreigners first rob and then murder," and that for the defence a pathetic appeal is made to the mercy of the jury, on account of the foreign extraction of the prisoner. How do either of these observations bear upon the issue? Is murder by a *foreigner* to be dealt with more harshly or more leniently than murder by any other person? Besides, no fact was elicited by the cross-examination of the witnesses for the crown, to impeach their credit or to give the prospect of shewing the prisoner's innocence. Consequently the observations of counsel were not pertinent to the issue,—were not fair remarks upon the evidence—were calculated to defeat the demands of justice,—and were under the authorities quoted illegal. Counsel have no privilege to contravene the provisions of the law, nor to destroy the reputation of a credible witness, as the means of securing the acquittal of a man who is (beyond all rational doubt) upon the pleadings and the evidence both legally and morally guilty. I admit the legal presumption of innocence until guilt be established; but this maxim does not justify the attempt on the part of the advocate, to obtain acquittal manifestly contrary to the law and the facts. His duty extends no further than by fair argument upon the law, and the facts to guard his client against an *illegal* conviction. For a man may be morally guilty and yet not legally guilty. If counsel attempt, by observations not pertinent to the issue, to obtain an acquittal contrary to

law, he subjects himself to the penal and other consequences of the law.

It is said, custom supports the privilege; but the law negatives the custom. Can a lawyer claim the privilege of obstructing the law? 'Tis the bounden duty, then, of the advocate to shew that his client is not guilty upon the technical form of the indictment, as framed or otherwise, according to law, notwithstanding in so doing (as Lord Brougham once said) he should "involve his country in confusion." His Lordship in reply to the Bishop of London in a debate on the 10th of August, said: The privilege is that on which truth in the elucidation of every case and the prevention of the grossest injustice depended. This is true, in some, but not in all cases. Suppose in Courvoisier's case (then referred to), the prisoner's counsel had persuaded the jury to discredit the prosecutor's witnesses, is it his Lordship's opinion that an acquittal would have been more consistent with truth and justice than a conviction? It cannot be justified upon any principle of law, morality, or fair dealing, that an advocate should assert his conviction of a man's moral innocence, or make injurious reflections upon private character, in order to delude the court and the jury, and ensure the acquittal of a prisoner, when his confession or evidence adduced against him necessarily raises the assurance in the advocate's mind of his guilt both upon principle and authority. I submit, an advocate in the performance of that duty which he owes to his client, has no right, no privilege to disobey the law. This is a subject of great importance to the public, more especially to the legal profession, from the chief justice upon the bench to the youngest attorney upon the law list, and all should unite to uphold the first maxim of our profession. "*Fiat justitia, ruat cælum*"

W. W.

TRANSFER OF MORTGAGE STAMP.

IN reply to the enquiry at p. 332, *ante*, by "A Country Solicitor," as to the proper stamps to be used on the transfer of a mortgage *where there is a further advance*; I beg to refer him to the case of *Doe dem. Burtley v. Gray*, 4 Nev. & Man. 719; wherein it was decided, under 3 G. 4, c. 117, that in such a case the transfer stamp does not apply,—that it is a new mortgage for the additional sum, and the progressive duty of 1*l.* is sufficient; also to the case of *Doe dem. Barnes v. Roe*, 4 Bing. N. C. 737, where it was held that an *ad valorem* stamp upon the further sum is sufficient, *without any deed stamp*.

R. H. R.

See reports of the first case above referred to, 3 Ad. & El. 89; and of the second case, 6 Scott, 625.

D. G.

[We have received letters on the same subject from H.; A.; and T. W. W. The latter refers also to the case of *Lant v. Pease*, 3 Nev. & P. 329.]

LOCAL AND PERSONAL ACTS, DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

3 & 4 Vict.

- CAP. 1.—An act to enable the Chard Canal Company to raise further monies, and to amend the act relating to the same canal.
- CAP. 2.—An act to amend the act relating to the Chester and Birkenhead Railway, and to raise a further sum of money for the purposes of the said undertaking.
- CAP. 3.—An act to enable the Sheffield and Rotherham Railway Company to raise a further sum of money; and to amend the act relating to the said railway.
- CAP. 4.—An act to enable the Lancaster and Preston Junction Railway Company to raise a further sum of money; and to amend the act relating to such railway.
- CAP. 5.—An act to enable the North Union Railway Company to raise a further sum of money.
- CAP. 6.—An act to enable the Liverpool East India Warehouse Company to sue and be sued in the name of the chairman, deputy chairman, or any one of the directors of the said company; and for other purposes relating thereto.
- CAP. 7.—An act to amend an act passed in the first year of the reign of his late Majesty King George the Fourth, intituled, An act for providing additional burying ground for the parish of Saint Mary Rotherhithe, in the county of Surrey; and for enabling the rector of the said parish to grant building leases of the glebe lands belonging to the said rectory; and for other purposes.
- CAP. 8.—An act for establishing a general cemetery for the interment of the dead in the city and borough of Winchester in the county of Southampton.
- CAP. 9.—An act to amend and enlarge the powers and provisions of an act passed in the twenty-eighth year of the reign of his Majesty King George the Second, for building a chapel in the town of Wolverhampton in the county of Stafford.
- CAP. 10.—An act for the more easy and speedy recovery of small debts within the towns and boroughs of Brighton and New Shoreham, and other places or parishes adjacent or near thereto, in the county of Sussex.
- CAP. 11.—An act for making a turnpike road from West Kennet to Amesbury, in the county of Wilts, with branches therefrom.
- CAP. 12.—An act for the better lighting with gas the city of Edinburgh and town of Leith, and places adjacent; and for other purposes relating thereto.
- CAP. 13.—An act for enabling the Edinburgh Gas Light Company more effectually to light with gas the town of Leith, the vicinity thereof, and other places in the county of Edinburgh; and for altering and enlarging the powers of the said company.
- CAP. 14.—An act to enable the Arbroath and Forfar Railway Company to raise a further

sum of money, and otherwise to amend and enlarge the powers and provisions of the act relating to the Arbroath and Forfar railway.

[To be continued.]

SUPERIOR COURTS.

House of Lords.

MARRIAGE IN SCOTLAND.—REAL ESTATE.— LEGITIMACY.

A person born before the marriage of his parents, though subsequently legitimated in Scotland by their marriage there, and thus rendered capable of succeeding as heir to his father in that country, will have his personal status of legitimacy acknowledged in England; but cannot, in virtue of such acquired legitimacy, succeed to real estate here.

This was a writ of error, originally brought on a judgment given by the Court of King's Bench, on a special verdict, which stated, in substance, that William Birtwhistle, being seised in his lifetime in his demesne as of fee of and in one undivided third part of and in the premises mentioned in the declaration, died so seised on the 12th May, 1819, without leaving any issue of his body; that all the brothers of the said William Birtwhistle had died in his lifetime, unmarried, and without issue, except Alexander, who married and had issue in the manner hereinafter mentioned; that the said Alexander Birtwhistle went from England to Scotland in the year 1790, and became domiciled there, and dwelt there until the time of his death; that one Mary Purdie was also a person dwelling and domiciled in Scotland during the whole time that the said Alexander Birtwhistle was domiciled there, and the said Alexander Birtwhistle did there cohabit with the said Mary Purdie, and did beget upon her the said John Birtwhistle (the plaintiff in error), who was their only son, and was born in Scotland on the 15th May, 1799; that on the 6th May, 1805, the said Alexander Birtwhistle and Mary Purdie were married in Scotland, according to the laws of Scotland; and on the 5th February, 1810, the said Alexander Birtwhistle died in Scotland, seised to him and his heirs of divers lands and tenements there situate, leaving the said John Birtwhistle him surviving, who after the death of his father was duly, according to the law of Scotland, served heir to the said lands and tenements of the said Alexander Birtwhistle, and now holds and enjoys the same in his own right, having from the time of his birth hitherto remained in Scotland and been domiciled there; that if the marriage of the mother of a child with the father of such child takes place in Scotland, such child born in Scotland, "if begotten and born while such father and mother respectively were unmarried, and if they respectively continued unmarried from the time when such child was begotten until their intermarriage," is equally legitimate by

the law of Scotland with children born after the marriage, for the purpose of taking land, and every other purpose, &c. The question was whether he could, as heir of the father, take possession of the lands in England. The case was argued by Mr. (now Lord Chief Justice) Tindal and by Mr. Cautenay, for the defendant; and the Court, consisting of Lord Chief Justice Abbott (afterwards Lord Tenterden), and Justices Bayley, Holroyd, and Little-*dale*, gave judgment for the defendant.^a The present writ of error was then brought, and the matter was argued in 1830, before the Judges, and a question was put to them, and they took time to consider it. Lord Chief Baron Alexander subsequently delivered their unanimous opinion against the right of the person claiming as heir; and Lords Brougham and Lyndhurst afterwards^b intimated their doubts on the subject, and desired that the case should be a second time argued at the Bar of this House. A second argument accordingly took place in July 1839, by Mr. Attorney General for the plaintiff in error, and by Mr. Dampier for the defendant in error. The Judges present at the second argument were, Lord Chief Justice Tindal, Mr. Justice Vaughan, Mr. Baron Parke, Mr. Justice Bosanquet, Mr. Justice Patteson, Mr. Baron Gurney, Mr. Justice Williams, Mr. Justice Coleridge, Mr. Justice Colman, and Mr. Justice Maule.

The Judges took time to consider their opinion, which was afterwards delivered by

Lord Chief Justice Tindal, to this effect:—*A.* went from England to Scotland, and was domiciled there, and so continued for many years till the time of his death. *A.* cohabited with *M.*, an unmarried woman, during the whole period of his residence in Scotland, and had by her a son, *B.*, who was born in Scotland. Several years after the birth of *B.*, who was the only son, *A.* and *M.* were married in Scotland according to the laws of that country. By the laws of Scotland, if the marriage of the mother of a child with the father of such child takes place in Scotland, such child born in Scotland before the marriage is equally legitimate with children born after the marriage, for the purpose of taking land, and for every other purpose. *A.* died seised of real estate in England, and intestate. And your Lordships found, upon the foregoing state of facts, this question, *viz.*—Is *B.* entitled to such property as the heir of *A.*? And in answer to the question so proposed to us, I have the honour to state to your Lordships that it is the opinion of all the Judges who heard the arguments, that *B.* is not entitled to such property as the heir of *A.*, and the grounds and foundation upon which our opinion rests are briefly these:—That we hold it to be a rule or maxim of the law of England, with respect to the descent of land in England from father to son, that the son must be born after actual marriage between his father and mother—that this is a rule *juris positivi*, as are all the laws

^a See 5 Barn. & Cress. 438, *et seq.*

^b See 2 Clark & Finnelly, 571.

which regulate succession to real property, this particular rule having been framed for the direct purpose of excluding, in the descent of land in England, the application of the rule of the civil and canon law, by which the subsequent marriage between the father and mother was held to make the son born before marriage legitimate; and that this rule of descent, being a rule of positive law annexed to the land itself, cannot be allowed to be broken in upon or disturbed by the law of the country where the claimant was born, and which may be allowed to govern his personal *status* as to legitimacy upon the supposed ground of the comity of nations. In the *Mirror of Justices*,^c it is said that "the common law only taketh him to be a son whom the marriage proveth to be so;" and Glanville says, that no person born out of lawful wedlock can be, in the legal sense of the term, an heir; and in the writ of inquiry as to bastardy given by him,^d the Archbishop is directed to inquire whether *A. B.* is "a bastard born before the marriage of his mother." Soon after the Statute of Merton, the question of bastardy ceased to be sent to the Bishops, and came to be decided in the King's Courts. At the time of the passing of that statute, Normandy, Aquitaine, and Anjou, were under the allegiance of the King of England. Many of the nobles had large possessions in those provinces. Those born in them were natural-born subjects, and could inherit land in England. Many of those who attended at the Parliament at Merton held large possessions abroad. In those possessions an *ante natus* could succeed as heir on the subsequent marriage of his parents; but notwithstanding that circumstance, no exception whatever is made in their favour in the Statute of Merton; and Lord Coke, referring to the ancient law of England, distinctly states,^e that William the Conqueror, though legitimated in Normandy by the subsequent marriage of his father and mother, was not legitimate in England. Such being the law of this country, the question is whether the law of any other country can be let in to control or modify it. It is quite true, that the English law will recognize the personal *status* conferred by a subsequent marriage on a child previously born; but it does not follow that the English law must therefore adopt all the conclusions and consequences of that marriage which hold good in the country where that marriage was celebrated. The distinctions relating to personal *status*, and to personal and real contracts, are universally known; and no one can contend that England is bound to surrender its own laws relating to the succession to landed property and to adopt those of any other country. For the purpose of inheriting land in England it is not sufficient that a man is legitimate: he must further prove that he was born after an actual marriage between his parents. On the whole, therefore, the Judges are of opinion

that *B.* is not entitled to the real property as the heir of *A.*

The Lord Chancellor and Lord Brougham having severally declared the obligations of the House to the Judges for the very great assistance derived from their able opinions, the further consideration of the matter was adjourned.

On the 10th of August, the case stood for judgment, Lord Brougham then intimated that the doubts he had felt when the case was before the House on the previous occasion had not been removed. He thought that the only effect of the statute of Merton was merely to affirm that *ante nati* were not entitled to inherit, without saying whether by the common law they were legitimate or not, it did not therefore preclude them from inheriting when legitimacy had been conferred upon them. To affirm the judgment of the court below would be to declare that the law or custom of this country with respect to the inheritance of real property was a something inherent in the land,—was a quality of the land itself,—and not of the claimant. The question as to the *status* of William the Conqueror was not very important, for whether he took by the will of Edward the Confessor, or by the strength of his own sword, his legitimacy was a matter of little value. The privileges granted by our law to the bastard *eigne* seemed by analogy to favor the doctrine that the *status* of the person being once established, the title to inheritance followed. Here the *status* was established by the Scotch law and recognised by our own. The cases of *Sheddon v. Patrick*, and the *Strathmore case*, seemed to have decided that notwithstanding bastardy might be indelible by the law of the country where the property lay, that law must bend to the law of the country of the party's domicile. By the latter law the party here was legitimate, and being so there, he was so all the world over. Then did not inheritability follow this legitimacy? To say that the common law required more than legitimacy for the purpose of inheriting real estate, was to say that it admitted a person to be legitimate for all other purposes, and yet not for that. He had already very fully expressed his opinions as to the inconvenience of acting on such a doctrine, and having now stated what occurred to him upon the able observations recently delivered by the Judges, he should merely add that, with his present opinions, he could not himself move that judgment be entered for the defendant in error; but he would add that if any of their Lordships made that motion he should not oppose it.

The Lord Chancellor had heard the second, but not the first argument of this case at their Lordships' Bar. He fully concurred with the Judges, and was satisfied with the grounds on which they had put their opinion. He should therefore move that the judgment of the House be given for the defendant in error.

Ordered accordingly.—*Doe, on the demise of John Birtwhistle*, plaintiff in error—*Agnes Vardill*, defendant in error.

^c Page 70.

^d Bk. 7, c. 14.

^e 2 Inst. 98.

^f 2 Clark & F. 571.

Vice Chancellor's Court.**PIRACY.—INJUNCTION.**

Acquiescence on the part of a trader, complaining of an alleged piracy by the fraudulent use of his marks is a sufficient reason against the grant of an injunction to restrain the use of such marks, and the complainant will be left to establish his right at law.

The plaintiff in this case is Mr. Crawshay, the large iron-founder and merchant; and the defendant is Mr. Alderman Thompson, who is also the proprietor of extensive iron works. The plaintiff complained that for many years he had been in the habit of using a particular mark in stamping his iron for exportation, this mark consisting of the letters W. C.; and that the defendant for the purpose of fraudulently imposing upon the public, and to induce them to suppose that his goods were those of the plaintiff, had colorably adopted the same mark, and particularly in the iron exported by him to Turkey. He stated that he had repeatedly warned the defendant against this abuse of his credit, but finding his applications of no avail, he had been compelled to file his bill, and now moved for an injunction to restrain the defendant from continuing the fraud imputed to him. The defendant denied altogether the charge imputed to him, and produced in Court plates representing the marks used by himself and the plaintiff, and also pieces of iron stamped with the respective marks for the purpose of shewing their distinct character.

Jacob and Wigram, for the plaintiff.—It was highly important to the plaintiff that no improper use should be made of any marks used by him to designate his iron. Having succeeded in obtaining one of a peculiar quality, his goods became much sought after, and if his purchasers were imposed upon by a fraudulent article, and thus induced to take goods of an inferior description, he would not only suffer an immediate loss by being supplanted in the market, but might sustain an irreparable injury by having his established name from time to time called into question through the disappointment of those who had been deceived into the purchase of iron of an inferior quality under the notion of the mark being that of the plaintiff. Much correspondence had taken place on this subject between the plaintiff and defendant, and considerable time had thus been consumed, but as this had occurred from a laudable desire on the part of the plaintiff to avoid litigation, it ought not to operate to his prejudice.

K. Bruce, Richards, and Roupell, for the defendants.—There must be an actual copying, coupled with a fraudulent intention; but so far from this being the case, the mark used by the defendant was not only different from that of the plaintiff, the letters W. O. being the mark of the one, while W. C. was that of the other; but the mark used by the defendant was an old mark, well-known throughout the whole trade, was originally brought from Russia, and had been in use many years. It was alleged that this mark was a colourable misrepresentation of that used by the plaintiff,

and that it was used for the purpose of defrauding the plaintiff; but W. O. is not W. C., and from the specimens produced to the Court, it is quite clear there is a marked distinction between the two marks. It is also the doctrine of a Court of Equity, that if a party complains of the infringement of a patent, or of the improper use of an invention, to which he claims an exclusive right, he is bound to apply to the Court immediately, otherwise he must first establish his right at law; and the defendant had no desire to prevent the plaintiff from bringing his action and trying his right before any jury of any county he might choose, or even before a Welsh jury.

Jacob, in reply.—There were no marks of this description known till the year 1830. The defendant says they are original Russian marks, but if they were so, they would have been in more general use, whereas it is proved they were not known till within the last three or four years. It had also been stated that the marks had been in use for several years, but not a single date was given to shew when they were first used. Certain dies were also handed, and it would have been easy to shew when they were made, but not a tittle of information was given on this point. The defence set up is sheltered under intentional evasion—an intentional omission of dates and a suppression of material facts. With regard to the question of acquiescence it is not deserving of the least consideration, for even if delay had occurred previous to the adoption of legal proceedings, the plaintiff cannot be damned.

In cases where time has elapsed with partial acquiescence, and works have been erected at considerable expense; or when a man has half built a house before an injunction has been applied for, the Court has sometimes refused to interfere, because considerable loss might accrue in consequence of the party not pursuing his right sooner; but in this case there is no such ground of complaint, and the correspondence between the parties sufficiently accounts for any apparent delay that may have taken place.

The Vice Chancellor.—The question is whether the Court on the affidavits that have been read, should at once interfere by injunction, or whether I should abide by the ordinary rules of the Court, and wait until the plaintiff has established his title at law. The plaintiff's title, as shewn by the affidavits, did not commence before 1834. He says that his father and grandfather carried on the works for many years previously, but there is nothing to shew a title except the personal usage of the plaintiff when he became the owner of the works, in 1834. It was impossible not to feel some surprise at the apparent inconsistency of the plaintiff's statements with respect to the length of time during which the marks had been used, for he says that he first became entitled to the works in 1834, and yet that he had used the marks for many years prior to 1837; no doubt he meant to refer to what had been done by his father and those in possession of the works

before him. The legal right, then, to use the mark W. C., only commenced, as I understand it, in 1834, and no other foundation is shewn for the legal title. It appears by the defendant's affidavits, that in 1836, iron was first imported into Turkey, with the marks W. C., which was about two years after the right first began, and that the plaintiff was aware shortly afterwards of the marks being used. The correspondence which then took place is not set forth, but from the circumstances stated, I must suppose that in March or April 1837, the plaintiff first heard of the invasion of his right. The plaintiff wrote in very harsh terms, and from the language of his letters, it is evident he was much excited upon the subject.

In 1838, there was again a complaint alleged which led to a correspondence in March 1839. The language there used by the plaintiff was very strong, but still no steps were taken to enforce his right. In July 1840, the plaintiff files his bill, in which he refers to a discovery made in the preceding month of June of the marks being improperly used, as if that were the first time that he had any knowledge of the marks having been so used, when it is clear that his attention was directed to the subject in 1837. After so long a time has elapsed between the first discovery of the alleged piracy and the application to prevent its continuance, the acquiescence being as long as the plaintiff had been in possession of the title previous to the discovery of the fraud charged, the Court was now called upon to interfere by injunction. On looking also at the papers which have been laid before me, containing copies of the marks, and at the pieces of bar iron produced, there appears to me a clear and marked distinction between them and the marks used by the defendant, though perhaps after the bar-iron has been exposed to the weather, by the time it arrives in Turkey, the sharp points may be worn off, and then the marks may appear similar. Under these circumstances I am unwilling to grant an injunction, and the motion must stand over to give the plaintiff an opportunity of establishing his title at law, with liberty for both parties to apply.

Crawshaw v. Thompson, August 7th, 1840.

Queen's Bench.

[Before the Four Judges.]

BANKRUPTCY.—SALE OF GOODS.

Goods sent on sale or return are not to be considered as sold and delivered, till the person to whom they are so sent has exercised his option as to keeping them; and if before he has done so he becomes bankrupt, such goods will not pass to his assignees.

This was an action of trover. The defendants pleaded that the goods were sold to a trader before his bankruptcy; that he became bankrupt; that they were appointed his assignees; and that afterwards the goods in question were delivered to them, the assignees, in pursuance of the bargain and sale between the plaintiff and the bankrupt. The replication

admitted a bargain with the bankrupt, but put in issue the sale and delivery. It was proved at the trial that the goods in question were delivered to the bankrupt a short time before his bankruptcy, on a contract for sale or return; and this it was contended did not vest in him any property in the goods until after he should have declared that he meant to keep them, which declaration he had not made when the bankruptcy took place. A verdict was returned for the plaintiff. A rule had since been obtained for a new trial.

Mr. *Alexander* shewed cause against the rule.—There was no sale or delivery of the goods in this case, so as to divest the plaintiff of the property in them, and to vest it in the bankrupt or his assignees. This case must be governed by that of *Gibson v. Bray*,^a where it was held, under circumstances similar to the present, that the goods were not the goods of the bargainee, as he had not time to determine whether he would keep them or not. *Delawny v. Barker*,^b *Hove v. Palmer*,^c *Bianchi v. Nash*,^d and *Coleman v. Gibson*,^e are all cases in which, though the point itself is not absolutely determined, the opinion of the judges is strongly expressed upon it. *Scott v. Pettit*,^f will be cited on the other side. But that case is not in point, for there the sale of the goods was complete, and the only question was, whether under the circumstances there had been a perfect delivery of them, so as to put an end to the right of the consignors to stop *in transitu*.

Mr. *Kelly*, in support of the rule.—This action will not lie.—There must have been a sale to the bankrupt, even though it was a sale upon some condition, such as that there should be a power to him of returning the goods if he disapproved of them. Under such a sale he would have a clear right over the goods. The assignees have the same right as the bankrupt. This is not like a case of stoppage *in transitu*. Here the goods were in the corporal possession of the bankrupt. The cases cited on the other side are inapplicable. They go to the question whether the goods were in the reputed order and disposition of the bankrupt. *Gibson v. Bray*, is most particularly a case of that sort. The question here is whether this was a sale or not. Is it or not a sale upon commission? Suppose Richardson had not become bankrupt at all, and that there had been an action against him for the price of the goods, he would not have had a defence to the action, for the proof would have shewn that there had been a sale of these goods on condition that he might, within a reasonable time, return them on the hands of the sellers. He would have been clearly subject to liability in respect of the goods, and would therefore have had a clear right to retain them. Then the same rights passed to his assignees. If they do not

^a 1 Moore, 519; 8 Taunt. 76; Holt, 556.

^b 2 Stark. 539.

^c 3 Barn. & Ald. 321.

^d 1 Mee. & Wels. 545.

^e 1 Moo. & R. 168.

^f 3 Bos. & P. 469.

return the goods they are bound by the sale. This is not less a delivery, because it was a delivery upon condition of paying for the goods. There is no doubt that the assignees are liable to an action for payment for the goods, but then they are entitled to retain the goods. *Butler v. Carver*,^s *Hare v. Waring*,^h and *Horn v. Wald*,ⁱ all shew that under circumstances like the present, the title to the goods passes to the vendee. If so, then his assignees are entitled to retain them.

Lord Denman, C. J.—I think, as at the trial, that the sale was not made out, and that the bankrupt was not bound—he had an option which he had not exercised—he was free, and the seller was free, and nothing passed at all.

Mr. Justice Littledale.—I am of the same opinion. This was an action of trover for certain goods alleged to have been sold to the bankrupt. The sale and delivery to him were put in issue on the pleadings. What I understand by a sale is, an absolute bargain and sale, but there is no such thing here. Suppose the defendant had not been a bankrupt, could he have made his own note at the time as of a delivery of goods sold to him? He could not, for it was only a delivery for approval, and till he exercised his option there was no sale. Then they are not bargained and sold to the bankrupt, nor delivered to him, so as to vest the property in them in his assignees.

Mr. Justice Paterson.—It appears here that there was a contract of bargain and sale, or sale and return, with the bankrupt. Then there is no proof that the goods were delivered to any body as goods sold. But the defendants plead specially that there was a sale to the bankrupt and a delivery to the assignees, in pursuance of that sale, and that they accepted the goods. The issue was on them, yet they gave no evidence to shew any thing of the kind. The acceptance by them must mean that they took to the contract,—that is, they exercised the option which the bankrupt might have exercised. But the goods were not sent to them for that purpose, and they had no right to exercise such an option. It would be a strange thing if, not deciding according to *Gibson v. Bray*, which has not been overruled, we were to hold that where goods are delivered on a contract of sale or return before the bankruptcy, but only just before it, and not in time to allow the bankrupt to exercise his option, they were to pass to the assignees, and that the assignees were entitled to take them without payment. I do not think that there is any thing to justify us in doing that.

Mr. Justice Williams—I am of the same opinion. It lay on the defendants to establish that the bargain and sale meant an absolute contract. The whole evidence went the other way.

Rule discharged.—*Smith v. Poore and another, assignees of Richardson, a bankrupt*, T. T. 1840. Q. B. F. J.

^s 2 Stra. 433.

^h 3 Mee. & W. 362.

ⁱ 1 Shep. Abr. 122.

MICHAELMAS TERM EXAMINATION.

THE persons applying to be admitted next Term, whose names we have already published, are no less than 188
But from this number is to be deducted the notices of persons examined in the last or some preceeding term, namely . . . 40
Leaving yet to be examined 148
To which is to be added those who have given examination but not admission notices 6

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The day of examination according to the Rule of Court, cannot be earlier than Monday the 16th November. Probably it will be fixed for Tuesday the 17th. The testimonials of due service must be left at the Law Society, on or before the 9th November. It is expedient to lodge them early, in order that they may be examined, and time allowed to supply any defects.

It being now nearly five years since the Examination Rules were made (Hilary Term, 1836), we recommend the Candidates for Examination to bestir themselves. The Examiners may be expected, as time passes on, to require increased proof of diligence.

THE EDITOR'S LETTER BOX.

We are obliged by another letter regarding Parliamentary Agents, and will attend to its suggestions.

The inquiry in a recent number, regarding the Practice as to Mortgage Stamps in certain cases, has produced several letters, the statements in which we have endeavoured to consolidate.

The letters of G. S.; "Inquisitor;" and "A Constant Reader," have been received.

We have received a Pamphlet, in the form of a Letter to the Lord Chancellor, written by Mr. Wainwright, one of the Sworn Clerks in Chancery, on the Duties of the Clerks in Court, the purport of which we shall state at the earliest opportunity.

The *Legal Almanac, Remembrancer*, and *Diary*, for 1841, is in a forward state of preparation. Names to be inserted in the Lists should be sent without delay.

The Legal Observer.

SATURDAY, SEPTEMBER 19, 1840.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CHANCERY REFORM.—DUTIES OF THE CLERKS IN COURT.

A LETTER to the Lord Chancellor “on the Duties of the Sworn Clerks in the High Court of Chancery in England,” has been published by Mr. Wainewright, one of the Sworn Clerks; and it is due to that gentleman and the body to which he belongs to state fully the case they have thus submitted for consideration. Mr. Wainewright correctly describes the recent act for facilitating the administration of justice in the Court of Chancery,^a as giving the Judges of the Court *absolute power over all persons and things in the Court of Chancery*; but he also truly says these great powers can excite no alarm, as they are entrusted to able and just hands. It will be recollected also that the “rules, orders, and regulations,” to be made under the act must be laid before parliament thirty-six days before they can come into operation, and consequently there will be the fullest opportunity afforded of doing justice to all parties who may be affected by the proposed alterations. We are glad that the Clerks in Court have thus early appeared in the field: their large pecuniary interest gives them a right to a prominent place in the discussion.

Mr. Wainewright quotes largely from the speech of Mr. Pemberton, on the nature of the duties of the Clerks in Court;^b and in answer to the assertion “that they do literally nothing,” (meaning, of course, nothing of importance) he devotes eight pages of extract from the return of the late Mr. Jackson, who was undoubtedly a very able Clerk in Court, and highly esteemed by the practi-

tioners. We cannot blame Mr. Jackson for setting out in a full and formal manner all the business transacted in the Six Clerks’ office; albeit, he states the particulars rather verbosely, after the manner of an answer in Chancery. When we come, however, to dissect this imposing return, it will be seen that nearly the whole of the services might be performed at small cost by an ordinary clerk, and no doubt are now done by the agent of the Clerk in Court, and his assistants. We shall separate these *minor* duties from the others:—

1. Inspecting the pleadings, and seeing that they are in proper form, and entering the names of the parties.
2. Entering demurrers and pleas.
3. Making out writs.
4. Producing records and making copies.
5. Making amendments in records.
6. Making out replications.
7. Receiving *subpoenas* to rejoin, and striking commissioners’ names.
8. Entering rules to produce and publish, and giving notice.
9. Receiving and transmitting notices of witness to be examined.
10. Giving certificates of the state of proceedings and entering appearances and consents.
11. Signing petitions of re-hearing, &c. and undertaking to pay costs, [which undertaking is not personally binding.]
12. Giving information to solicitors of the names of the Clerks in Court on whom to serve notices, &c.
13. Receiving orders for sequestration, &c.
14. Attending the Court with records when required, as evidence.
15. Entering appearances and producing bills. Attending at the public office for answers, &c. Entering pleas. Keeping depositions until published.
16. Signing consents to petitions. Examining office copies in order to make them evidence.
17. Drawing docquets of decrees and obtaining the Judge’s signature.

^a 3 & 4 Vict. c. 94. See p. 310, *ante*.

^b See our extracts from that part of the speech, p. 290, *ante*.

18. Making exemplifications of records.

19. Receiving deeds, books, and papers for inspection, and attending the Court and Examiners therewith.

20. Attending the Court with infants.

21. Having the custody of all bills.

22. Issuing attachments.

We have numbered the several separate paragraphs of this formidable-looking return, in order that the services may be distinctly seen, and have, we believe, fairly abridged the purport of them. In the pamphlet the details are very ostentatiously paraded. It will be observed that many of the particulars are of the same kind, and might have been stated under a very few heads; namely, 1. Issuing writs; 2. Entering and preserving Pleadings; 3. Receiving and transmitting Notices and Orders; 4. Producing Records and making Copies; 5. Entering Appearances, Rules, &c.

All these things, it is evident, might be done by a few careful clerks under the superintendence of a proper officer; but the truth is, that a large part of them really belong to the business of the solicitor. He should prepare the writs, and the officer of the Court should merely affix his official stamp. The orders of the Court, as well as all notices, should be served by one solicitor on the other, instead of the roundabout method of being served on the Clerk in Court, and by him forwarded to the solicitor. The pleadings should be filed, and copies immediately delivered by one solicitor to the other; and by these means the delay of waiting for office copies, and more than half the expense, would be avoided. A similar reform was effected in the Common Law Courts by abolishing the office of the Clerk of the Papers, and the "Paper Books," as they were called.

We shall now advert to those duties specified in the return which are not of this ordinary kind, but require the exercise of some professional skill and knowledge. It does not follow, however, in order to perform these duties, that the Six Clerks' establishment should be kept up. These duties are,—

1. Ascertaining that the interest of infants and proposed guardians do not clash.

2. Taking care that the process of attachment is not abused.

3. Certifying to the Court and Masters any question of practice required.

4. Giving information to solicitors on the practice of the Court.

5. Taxing bills of costs.

Now we submit that the interests of infants will be properly protected by the

master to whom the matter is referred. In the mean time, if necessary, let the solicitor make an affidavit that in his judgment and belief the interests of the infant and guardian do not clash. This will be a much better security than the Clerk in Court perusing the pleadings, which may not disclose the whole state of the case. The process of attachment must issue on the responsibility of the solicitors, under the orders of the Court,—a power no larger than is given to attorneys by the Common Law Courts in issuing executions against the persons and property of defendants to an unlimited amount.

The two main points, it will be readily observed, on which the case of the Clerks in Court must depend, are their *knowledge of the practice*, and their *competency to tax bills of costs*. We shall first advert to their merits in giving information of the practice, —whether certified to the Court, or the Masters, or communicated to their clients the solicitors. On this point we must in fairness give the whole of Mr. Jackson's statement.

"The practice of the Court rests either upon the known *custom* of its application, upon Acts of Parliament and general orders, or upon cases decided from time to time by the Court; and of this practice, in all its various details and applications, the Sworn Clerks, from their more immediate connection with the Court, and their constant and undivided attention to it (none of them practising in any other Court), and for the other reasons before stated, must be expected to have an extensive knowledge; and when the great number of solicitors in London, and in the country, is considered, a very small portion of whom are acquainted with the practice of the Court in all its branches, and not one of whom, it is probable, can have conducted a cause through every stage of proceeding which may occur, it necessarily follows, that there is scarcely one solicitor in London who does not have frequent or occasional recourse to the Sworn Clerks for very material practical information, as he proceeds in a cause, which, if mistaken, not only tends to serious injury of the suitor's rights in his cause, but is also attended with great expense in costs; and as the Sworn Clerks also frequently give advice as to the conduct of suits, it must be evident that a very considerable part of their time is consumed thereby, and for which particular duties they receive no emolument or fee [*except a fee every term, in every cause*].

On this essential matter, Mr. Wainewright also enlarges:

"From the variety of proceedings in a suit in Chancery, and from the vast number of points raised by, or giving rise to, interlocutory applications to the Court, it happens that even solicitors who have the greatest business in the Court, are but inadequately acquainted

with the details of practice, upon which success or failure in many cases greatly depends.

"It is also submitted, that their deficiency can by no means be supplied by *books of practice*, whose limits necessarily prevent them from including a great number of cases which frequently arise with circumstances peculiar to themselves.

"On the other hand, the greater part of the proceedings in every suit coming in some way or other under the observation of some one or more of the Clerks in Court, their collective experience embraces the knowledge of almost every practical difficulty which is likely to arise in the progress of any suit. And in consequence of their being together in one office, and their constant intercourse with each other in business, this collective experience becomes the property, or is at the service, of each individual in case of need. As also the Clerks in Court are fully aware of the importance of uniformity to their own credit and respectability, both as a class and as individuals, they never give an opinion in doubtful cases without consulting with one another.

"From the above causes it happens that Clerks in Court are perpetually consulted in the progress of almost every suit; and their time consequently is in this manner much taken up; not to mention the anxiety they feel as to the correctness and successful result of proceedings taken by their advice.

"For this loss of time and trouble they receive no other remuneration than the term-fee.

"If there were no such officers as Clerks in Court, recourse would be had to counsel for advice, whose fee on any (even the smallest) occasion, would be more than three term-fees of the Clerk in Court, with the addition of the solicitor's charge; and from such advice the suitors and the solicitors would receive much less certain and satisfactory information."

This argument in favour of preserving the Clerks in Court, because they give information on the practice of the Court, will scarcely bear examination. If such a staff as this were necessary to aid the Court of Chancery, how is it that a similar one was abolished by the Courts of Common Law? The Courts of Queen's Bench and Common Pleas, and, until a few years ago, the Exchequer of Pleas, had such an establishment of Clerks in Court, or Side Clerks, to transact the business of the Court; but they have been abolished as producing needless expence and delay. That change has been found most strikingly beneficial in the Court of Exchequer, where it was last made. A similar result will, no doubt, take place in the Court of Chancery. Nothing, we think, can be more objectionable than that the practice of the Court should depend not upon the rules, orders, and decisions of the Court, but on a kind of traditionary knowledge acquired by the Clerks in Court—

transmitted from father to son, or uncle to nephew—or learnt in casual communication amongst each other. It is by no means creditable to any of our Courts that their mode of procedure should be so uncertain, or so difficult to learn, that an expensive class of officers should be paid by the suitors to expound it.

We conceive that each officer of the Court, in discharge of his duty, should state the practice of his department in a full and minute manner, as well for the information of the practitioners, as to insure the regularity of the proceedings of the Court. Thus if the Clerks of the Writs—the Keeper of the Records, (with whom all pleadings should be filed,)—the Registrar, and all other officers, were to state the regulations of their several offices, it would surely not be difficult for the solicitor to conduct his business correctly. To us it appears evidently preferable that the practice should be explained by an impartial officer, than by one who acts as the agent of the suitor, however respectable and independent he may happen to be.

The imputed imperfection of the Books of Practice should be remedied, and an authorised Book compiled by the officers of the several departments. Where the Court has not already laid down a rule applicable to cases which occur, one of the Judges should settle the point either on the application of the officer, or the solicitors, without any costly or dilatory application by counsel to the Court.

Another subject of remark in the pamphlet before us is the charge for *office copies*. On this Mr. Wainwright says:

"As to Mr. Pemberton's remarks on the charge of the sworn clerks for office copies, and his comparing it with the charge of 1*d.* per folio in the Master's office, he does not state that in the Master's office the persons employed are now paid by salaries, and consequently it was not contemplated that they should derive much, if any profit from copying. In the Six Clerks' Office, as amongst solicitors, profit on copying is contemplated as one means of paying clerks in court, or solicitors, for their various duties, they being paid by fees, and not by salary. This distinction being premised, it may be added, that out of the 10*d.* per folio paid by the suitor, 4*d.* goes to the Six Clerks, four sixths of which 4*d.*, will in a few years, by means of the Chancery Regulation Act of 3 & 4 W. 4, c. 94, s. 2*d.*, go into the fee fund.

"Those who have to do with taxation, know that the sworn clerks, by the mode of writing office copies, are rigidly exact in ascertaining their length, and that copies of petitions and other documents made by solicitors are not so

exact, and even on taxation are usually over estimated, and that consequently the 6d. in the one case, and the 4d. per folio, (the charge of the solicitor) in the other, are equivalent, to say the least.

"No one that I know of has ever noticed the charge of 1s. 2d. per folio for copies made in the Examiner's Office."

It is forgotten, in this statement, that the solicitor is *responsible* for the accuracy of the papers, which are charged at 4d. per folio, and for their delivery to the proper person; whilst the Clerk in Court incurs no personal responsibility for his office copies; but if any question arises the original record is produced.

On the subject of the *large incomes* derived by the Clerks in Court, Mr. Wainewright makes the following remarks:

"Much has been recently said about the incomes of individual sworn clerks, and if, as stated by Mr. Pemberton, they have no duties to perform, then, indeed, such emoluments must be considered as he designates them, enormous grievances. But the case assumes a different aspect, if these amounts merely represent the great quantity of business done,—business it should be remembered, which must be done.

"The case of such sworn clerks is the same as that of certain eminent solicitors, who, from extent of connexion, do a large amount of business, and consequently derive great incomes. Has it ever been said, that because of this necessary result of large business in some hands, solicitors are too well paid, or that the incomes of these eminent persons of their body are enormous grievances? In both instances, connexion is the result of, or is sustained by, talent; and the emolument from such connexion, by means of fees, calls forth and keeps up a supply of skill more surely than the system of salary can be expected to do. The quantity of work done under such stimulus is necessarily far greater than could be with any fairness expected of salaried officers—this is an important consideration in estimating the probable expense of a new system.

"In corroboration of this view it may be permitted to again refer to Mr. Field's testimony, as to the way in which business is done by the Clerks in Court. He is indeed rather inconsistent with himself when he quotes Mr. Lowe's plesantry about Mr. Shaddick being a good Clerk in Court when a lunatic; neither Mr. Lowe nor Mr. Field have stated a very remarkable fact, viz. that Mr. Lowe had actually withdrawn his business from Mr. Shaddick some time before his lunacy, on account of the inconvenience he either experienced or anticipated from the altered mind of Mr. Shaddick.

"Before quitting this part of the subject, it is proper to remark, that the profits of the Clerks in Court have been very considerably overstated, in consequence of not attending to the fact, that the order of the House of Com-

mons called for the return of a part only of the deductions from such profits. The Clerks in Court, in their return, drew attention to this point, but their notice on this head has been overlooked."

It may be sufficient on this point to say, that in proportion to the magnitude of a solicitor's business is his *responsibility*—a point on which, if he had time to think, he would probably rejoice in collecting his large outstanding bills, and retiring from business as soon as possible. The Clerk in Court incurs no risk, like that of the solicitor; and in large offices the profits are generally divided amongst several partners.

Mr. Wainewright, in vindication of the industry of himself and his brethren, says, that "for some weeks, up to the 14th August, he had been working for twelve or fourteen hours a-day in the taxation of costs, and his agent and clerks were similarly occupied in the transaction of his other business." It is well-known that a few weeks before the Long Vacation there is always a great pressure of business in Chancery, particularly in taxing costs, and Mr. Wainewright, as one of the five clerks of the largest practice, was of course busily engaged; and he adds, that "all the year round the Clerks in Court and their agents are, at least, as much occupied as the salaried officers of the Court." This may be true, but proves only that the other offices of the Court may also require to be re-modelled: that of the Masters in particular, and we believe also the Registrars, where many improvements may be effected.

We have devoted as much space as our limits will permit to these various subjects, and must reserve the consideration of Mr. Wainewright's remarks on the taxation of costs, until another opportunity. Indeed the only plausible ground for continuing the Six Clerks' Office is, the *taxation of costs*, and this belongs to the Masters or some other competent persons as taxing officers. It used to be the practice for the Masters to tax at their own offices, but now the Clerks in Court have usurped their duty, and transferred the taxation to the Six Clerks' room. The true question is, whether the work which is now performed at the Six Clerks' Office at an enormous expense to the suitors, could not be as well performed at a much less expense, and in a more efficient manner, by other means. We believe that the appointment of a board of taxing officers, composed in part of the Clerks in Court, would be the proper mode of removing the only obstacle to the abolition of the Six Clerks' Office.

THE BANKRUPTCY AND INSOLVENCY COMMISSION.

No. II.

THE Commissioners next proceed to show in detail the material defects of the existing law of bankruptcy and insolvency, and they then point out a class of persons who are often brought within the operation of the Bankrupt Law in an indirect manner.

“ Farmers.	Lodging-house keepers.
Graziers.	Ship-owners.
Brickmakers.	Coach proprietors.
Workers of mines.	Carriers.
Attorneys.	Auctioneers.
Schoolmasters.	Surgeons & Apothecaries.
Livery stable keepers.	Authors.

“ A farmer is expressly exempted from the operation of the bankrupt law; but a farmer who purchases cattle, not for the mere purpose of feeding them on his farm, but for the purpose of selling them again with a view to profit, independently of the occupation of his farm, may be made a bankrupt. Upon the question of trading also, and particularly by a farmer, or other person not directly within the meaning of the bankrupt law, there is much scope for contradictory swearing, and, therefore, for litigation, from the circumstance that a single act of buying and selling, if there be evidence of an intention to continue it, is sufficient to bring a person within the operation of the law. The distinctions in the different cases upon this subject are very nice. It is often a matter of great difficulty to determine whether purchases made by a farmer are ancillary to the profitable expenditure of the produce of his farm, or whether the direct object of them be a profit upon the resale, the smallness of the profit being no consideration, and one instance of buying and selling being sufficient to constitute the trading. A series of cases has arisen in which the question has been whether a particular business has been carried on by a party as a mode of enjoying the profits of an estate, or substantially and independently as a trade. And, as justly observed by Lord Eldon, nice distinctions have been taken in almost every case which has occurred; and in those in which the Lord Chancellor has taken upon himself to decide the trading or no trading, the question has been matter of fair controversy on affidavits. In many cases the Lord Chancellor has considered the question upon the affidavits too difficult of decision, and has directed an issue, or an action, to have the opinion of a jury. If a person make bricks on his own estate, and sell them, as a mode of enjoying the profits of the estate, he is no trader, whether he be a freeholder or a termor; but if he buy the brick earth as a chattel, and, purchasing the other necessary materials, sell the bricks made with that earth, he is a trader. The same doctrine applies to the case

of a person manufacturing alum, burning lime, or selling minerals from his own quarry. The reason upon which a landlord or farmer selling his own produce is not regarded as a trader, extends also to those who, in order to enjoy the produce of their personal labour, are compelled to the act of selling, and incidentally to the act of buying in order to sell. If the buying be to a greater extent than is necessary to supply the personal labour, it may be an act of trading. In all these cases it is a question of intention and circumstances. A grazier is expressly exempted from the operation of the bankrupt law; but a grazier is often incidentally brought within the scope of the law, by one or more instances of buying and selling cattle, and with some evidence of an intention so to deal generally, or of circumstances from which such intention may be inferred. Attorneys, as such, are not liable to the bankrupt law; but they are often brought incidentally within its operation, as having used the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody. The keeper of a private lodging-house, who seeks a livelihood by a profit on provisions furnished to his lodgers, has been held subject to the bankrupt law—as an hotel-keeper,—though the provisions are set apart as the separate property of each guest; but a lodging-house keeper, not proved to have bought and sold provisions, is not a trader. Ship-owners, coach-proprietors, and carriers, as such, are not liable to the bankrupt laws; but such persons are often brought within its operation, as carrying on, in connexion with their principal business or calling, that of buying or letting for hire. A livery-stable keeper, as such, is not a trader; but a livery-stable keeper, who buys provender which he lays up, and not only supplies to the horses standing with him, but sells to any person who wants it, is a trader. A surgeon and apothecary is not a trader in that capacity; if, however, he do not confine his sale of drugs to the patients on whom he attends professionally, but sells them to any chance customers, who apply for them, he is a trader. These are but a few of the numerous cases of disputed or equivocal tradings, which have occupied the attention of the courts. They have afforded subject of dispute to the most learned, and have had a constant tendency to disturb the dealings, and vary the contracts of those who cannot be supposed to have contemplated or comprehended those legal niceties. In our opinion much litigation and expense would be saved by extending the specific description of persons liable to the bankrupt law, and we think that the law should be made to apply directly to *all persons engaged in trade, or business requiring capital and credit.*”

The petitioning creditor's debt must now be, if it be to one creditor, 100*l.*; if to two creditors, 150*l.*; if to three or more creditors, 200*l.* The Commissioners think this too high, and recommend its reduction to

50*l.* for any one creditor; 70*l.* for any two creditors; and 100*l.* for any three or more creditors.

The following recommendation as to an alteration in the law relating to the act of bankruptcy contains a useful summary of the law on that subject. The act, they say, may be considered either as compulsory or voluntary.

"The only modes of compelling a trader, who is insolvent, or unable to meet his engagements, to become bankrupt are, by obtaining final judgment against him, and proceeding to take him in execution, or by filing an affidavit of debt in the Court of Bankruptcy, and proceeding thereupon in the manner provided by the statute passed in the 1st and 2d year of your Majesty's reign, c. 110, s. 8.

"The first mode is dilatory, expensive, and unsatisfactory; the second may also cause much delay and expense, and does not answer the purpose intended, for it is in fact nothing more than putting in bail, which, though in many cases, very difficult to obtain (and therefore in such cases operating harshly upon defendants having a good defence), is generally, when obtained, useless to the creditor. The trader, having given the required bond, may afterwards render to prison in discharge of his sureties; and thus the creditor is put to great trouble, delay, and expense, the trader may dispose of all his property, and the creditor get nothing. The bond required to be given by the above statute was intended as a substitute for that security which a creditor before obtained through the medium of an arrest. But it has by no means the same effect in producing acts of bankruptcy as the fear of personal arrest on *meane process*. Nor is the power of taking the person of a debtor in execution equivalent to the power of arrest on *meane process*, for the purpose of forcing an act of bankruptcy. The power of arrest on *meane process* caused not merely the act of bankruptcy by lying in prison for twenty-one days, but induced traders, who were unable to meet their engagements, to commit other acts of bankruptcy, by departing from their dwelling-house, or otherwise absenting themselves, or beginning to keep house. A trader, not being in fear of personal arrest till after judgment, has now no motive for committing any of these acts of bankruptcy until a judgment be obtained against him, when they are of comparatively little avail to creditors. We do not, on this account, advocate imprisonment for debt on *meane process*; but we would suggest that, as the motive for committing acts of bankruptcy in the early stage of a trader's difficulties is gone, some other compulsory act of bankruptcy or test of insolvency, at such period, is much to be desired.

"We think that the interests of commerce require that, when a trader is unable to meet his engagements in the ordinary course of business, means should be afforded of compelling a division of his property rateably

amongst his creditors, as speedily and cheaply as possible.

"This is a point of the greatest importance; but it is certainly one that is not unattended with difficulty. On the one hand, it is necessary to guard against requiring from a trader, as a test of his solvency, that which, though he were perfectly solvent, it might be impossible for him to procure. On the other hand, it is essential to the creditor that the test should be of such a nature as will afford him proper security.

"We may here observe that the same difficulty which has been felt by the commercial world in compelling an act of bankruptcy, in consequence of the abolition of imprisonment for debt on *meane process*, was previously felt in the cases of merchants and traders who were entitled to privilege of parliament. For such cases the legislature provided a remedy, which was, undoubtedly, very effectual.

"By the 4 G. 3, c. 33, any creditor or creditors, to certain value mentioned in the act, of any merchant, &c., having privilege of parliament, upon affidavit being filed on record in any of the Courts at Westminster by such creditor, that such debt was justly due, and that the debtor, as he believed, was a merchant, &c. might sue out of the same court a summons, or an original bill and summons, against such merchant, &c. and serve him with a copy thereof; and if such merchant, &c. should not, within two months after personal service of such summons, pay, secure, or compound for such debt to the satisfaction of the creditor, or enter into a bond in such sum, and with two such sufficient sureties, as any of the judges of the court out of which such summons issued should approve of, to pay such sum as should be recovered in such action, together with such costs as should be given in the same, he was to be accounted and adjudged a bankrupt from the time of the service of such summons, and any creditor might sue out a commission against such person.

"The 45 G. 3, c. 124, reciting that the above provision in the 4 G. 3, c. 33, had, by experience, been found to be extremely salutary, and that it was fitting to adopt every means to give effect to it, required that every such merchant having entered into the bond, &c. should, within two months after personal service of the summons, cause an appearance to be entered to the action in the proper court; and in default thereof he was to be accounted and adjudged bankrupt from the time of the service of the summons.

"The 6 G. 4, c. 16, s. 10, embodies the above provisions of the 4 G. 3, c. 33, s. 1, and 45 G. 3, c. 124, s. 1, but makes one calendar month, instead of two, the limit of time within which the requisites are to be complied with.

"The material difference between the provision of the statute of the 1 and 2 year of your Majesty's reign, c. 110, s. 8, and the 6 G. 4, c. 16, s. 10, is that, by the statute of the 1 and 2 year of your Majesty's reign, c. 110, s. 8, the bond which the debtor has to enter into is conditioned in the alternative, for the

debtor to pay such sum as shall be recovered, or to render himself to prison; and in the event of the bond not being given, the act of bankruptcy takes effect from the completion of the twenty-one days; whereas, by 6 Geo. 4, c. 16, s. 10, relating to traders having privilege of Parliament, the bond is conditioned absolutely to pay such sum as shall be recovered in the action, together with costs, so that if the plaintiff recover in the action, the sureties are at all events liable, and the act of bankruptcy takes effect from the service of the summons.

"It may be asked why the provision of the 4 Geo. 3, c. 33, which was made 'to support good faith and credit in commercial dealings,' and which was subsequently declared by the legislature to have been 'found by experience to be extremely salutary,' should not be extended to all traders. The circumstance of traders having privilege of Parliament, not being liable to be taken in execution, may be given as a reason for the bond being absolute as to them; and we are of opinion, that to extend the above law, which is applicable to traders having privilege of Parliament, to all traders, would be attended with fatal consequences to many traders being perfectly solvent. We think that very many traders, even of those who might be solvent, and have good grounds for disputing the debt sworn to, would be unable to obtain a security conditioned absolutely for the payment of such sum, with costs, as should be recovered against them.

"Considering, therefore, the difficulty of compelling an insolvent trader to become bankrupt, we are of opinion that a further remedy should be provided, and that such remedy may be found in adopting our previous recommendation of allowing a creditor, upon his making affidavit that his debt is justly due, that he has delivered the particulars of the same, and demanded payment of the debtor, and that the debtor, being a trader, has refused payment, to summon such debtor for the purpose of compelling him to state, upon his oath, whether he believes that he has any defence to the demand, or to any part thereof, and by making the non-payment within a certain time, of any sum admitted to be due, an act of bankruptcy.

"All the acts enumerated in the statute 6 G. 4, c. 16, as acts of bankruptcy, with the exception of that which is constituted by lying in prison twenty-one days, may be called voluntary acts on the part of the trader. There is amongst these one which was especially provided to enable a trader who believes himself insolvent, or who is unable to meet his engagements, to join in suing out a fiat against himself. The filing of a declaration of insolvency in the Secretary of Bankrupts' Office is made an act of bankruptcy; but there are certain forms respecting this, and in the issuing of a fiat upon it, which, in practice, cause greater delay in effecting the desired object of procuring an adjudication of bankruptcy with the consent of the trader, than under any other act of bankruptcy, dependent on the will of the trader, that may be committed by him.

"The declaration of insolvency must be attested by a solicitor. The advertisement of it in the Gazette is to be inserted within eight days after the declaration has been filed; but a docket cannot be struck upon such act of bankruptcy before the expiration of four days next after the insertion of the advertisement, in case the fiat is to be executed in London, or before the expiration of eight days after such insertion, in case the fiat is to be executed in the country. Hence it may be twelve days in London, and sixteen days in the country, before this act of bankruptcy, which is, in law, committed at the time the declaration is filed, can be acted upon; whereas, upon any other act of bankruptcy, a fiat may immediately be prosecuted."

The Commissioners therefore recommend that the declaration of insolvency should be done away with as an act of bankruptcy, and that any trader, whether he had committed an act of bankruptcy or not, might on his own application, with the concurrence of one or more of his creditors, be adjudged a bankrupt.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No XIX.

COURT OF ADMIRALTY.

3 & 4 Vict. c. 65.

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England.

[7th August 1840.]

Dean of Arches to sit for Judge of Court of Admiralty in certain cases— Whereas the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Dean of the Arches for the time being to be assistant to and to exercise all the power, authority, and jurisdiction, and to have all the privileges and protections of the Judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the Dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the same Court, and also during any vacancy of the office of Judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such suits and proceedings

shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the Judge of the High Court of Admiralty.

2. *Advocates, Surrogates, and Proctors of Court of Arches to be admitted in the Court of Admiralty.*—And be it declared and enacted, that all persons who now are or at any time hereafter may be entitled to practise as Advocates in the Court of Arches are and shall be entitled to practise as Advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as Surrogates or Proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as Surrogates and Proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of Advocates, Surrogates, and Proctors in the said Court respectively.

3. *Whenever a vessel shall be arrested, or proceeds brought into registry, the Court to have jurisdiction over claims of mortgagees.*—And be it enacted, that after the passing of this act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively.

4. *Court to decide questions of title in all cases of possession, salvage, &c.*—And be it enacted, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said Court after the passing of this act.

5. *Appeals may be made to the Court of Admiralty on distribution.*—And be it enacted, that whenever any award shall have been made by any justices of the peace, or by any person nominated by them, or within the jurisdiction of the cinque ports by any commissioners, respecting the amount of salvage to be paid, or respecting any claims and demands for services or compensation, which such justices and commissioners within their several jurisdictions are empowered to decide under the provisions of two acts passed in the second year of the reign of King George the Fourth, for remedying certain defects relative to the adjustment of salvage, or whenever any sum shall have been voluntarily paid on any such account of salvage, services, or compensation, it shall be lawful for any person interested in

the distribution of the amount awarded or paid to require distribution to be forthwith made thereof, and the person or persons by whom such amount shall be awarded, or in the case of voluntary payment, the person by whom the same shall have been received, shall forthwith proceed to the distribution thereof among the several persons entitled thereunto, to be certified in the case of an award, under the hand of the person or persons by whom such amount shall be awarded, and an account of every such distribution shall be annexed to the award; and if any person interested in the distribution shall think himself aggrieved on account of its not being made according to the award, or otherwise, it shall be lawful for him, within fourteen days after the making of the award, or payment of the money, but not afterwards, to take out a monition from the said High Court of Admiralty, requiring any person being in possession of any part of the amount awarded or voluntarily paid to bring in the same, to abide the judgment of the Court concerning the distribution thereof; and in the case of an award the person or persons by whom the award shall have been made shall, upon monition, send without delay to the said High Court of Admiralty a copy of the proceedings before him and them, and of the award, on unstamped paper, certified under his or their hand; and the same shall be admitted by the Court as evidence, and the amount awarded or voluntarily paid shall be distributed according to the judgment of the Court.

6. *The Court in certain cases may adjudicate on claims for services and necessities, although not on the high seas.*—And be it enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessities supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made.

7. *Evidence may be taken vivâ voce in open court.*—And be it enacted, that in any suit depending in the said High Court of Admiralty, the Court (if it shall think fit) may summon before it, and examine or cause to be examined, witnesses by word of mouth, and either before or after examination by deposition, or before a commissioner, as herein-after mentioned; and notes of such evidence shall be taken down in writing by the Judge or Registrar, or by such other person or persons, and in such manner, as the Judge of the said Court shall direct.

8. *Evidence may be taken vivâ voce before a commissioner.*—And be it enacted, that the said Court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an Advocate of the said High Court of Admiralty, of not less than seven years' standing, or a barrister at law of not less than seven years' standing, to take evidence by word of

mouth, upon oath, which every such commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order, and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court, in such form and manner as in and by the commission shall be directed; and that such commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors, or agents, if such parties, or either of them, shall think fit so to do; and such commission shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said Court.

9. *Attendance of witnesses and production of papers may be compelled by subpoena.*—And be it enacted, that it shall be lawful in any suit depending in the said Court of Admiralty for the Judge of the said Court, or for any such commissioner appointed in pursuance of this act, to require the attendance of any witnesses, and the production of any deeds, evidences, books, or writings, by writ, to be issued by such Judge or commissioner in such and the same form, or as nearly as may be as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said Judge or commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

10. *Provisions of 3 & 4 W. 4, c. 42, extended to Court of Admiralty.*—And be it enacted, that all the provisions of an act passed in the fourth year of the reign of his late Majesty, intituled *An Act for the further amendment of the Law, and better administration of justice*, with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

11. *Power to direct issues.*—And be it enacted, that in any contested suit depending in the said Court of Admiralty the said Court shall have the power, if it shall think fit so to do, to direct a trial by jury of any issue or issues, on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues, shall be specified by the Judge of the said Court, at the time of directing the same: and if the parties

differ in drawing such issue or issues, it shall be referred to the Judge of the said Court to settle the same; and such trial shall be had before some Judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at nisi prius, in London or Middlesex, or before some Judge of assize at nisi prius, as to the said Court shall seem fit.

12. *Costs of issues and commissions to be in the discretion of the Court.*—And be it enacted, that the costs of such issues, or of such commission as aforesaid, as the Judge of the said High Court of Admiralty shall under this act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said High Court of Admiralty, in such manner as the said Judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

13. *Power to direct new trials.*—And be it enacted, that the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner herein-before directed with regard to the first trial of such issue, and may by order of the same Court direct such costs to be paid as to the said Court shall seem fit upon any application for a new trial, or upon any new trial or second or other new trial, and may direct by whom and to whom, and at what times and in what manner such costs shall be paid.

14. *Granting or refusing new trial, matter of appeal.*—And be it enacted, that the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in Council.

15. *Bills of exceptions to be allowed on trials of issues.*—And be it enacted, that at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights, and remedies with respect to bills of exceptions as parties impleaded before Justices may have by virtue of the statute made in that behalf in the thirteenth year of the reign of the year of King Edward the First, with respect to exceptions alleged by them before such Justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the Judge or Judges to whom such exceptions shall have been made, shall be annexed to the record of the said issue.

16. *Record of the issue to be transmitted to the Court of Admiralty.*—And be it enacted, that the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said court, and upon all such persons; and in all further proceedings in the cause in which such fact is found the said court shall assume such fact to be as found by the jury.

17. *Provisions of 2 & 3 W. 4, c. 92, as to appeals to apply to suits in Court of Admiralty under this act. 3 & 4 W. 4, c. 41, to apply in same manner. Certified notes of evidence taken may be admitted on appeal.*—And be it enacted, that every person who, if this act had not been passed, might have appealed and made suit to her Majesty in council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an act passed in the third year of the reign of his late Majesty, intituled, “An Act for transferring the powers of the High Court of Delegates, both in Ecclesiastical and Maritime causes, to his Majesty in council;” may in like manner appeal and make suits to her Majesty in council against the proceedings, decrees, and sentences of the said court in all suits instituted and proceedings had in the same by virtue of the provisions of this act, and that all the provisions of the said last-mentioned act shall apply to all appeals and suits against the proceedings, decrees, and sentences of the said Court in suits instituted and proceedings had by virtue of the provisions of this act; and such appeals and suits shall be proceeded in in the manner and form provided by an act passed in the fourth year of the reign of his late Majesty, intituled “An Act for the better Administration of Justice in his Majesty’s Privy Council;” and all the provisions of the said last-mentioned act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said Court in suits instituted and proceedings had by virtue of the provisions of this act: Provided always, that in any such appeal the notes of evidence taken as hereinbefore provided by or under the direction of the Judge of the said High Court of Admiralty shall be certified by the said Judge to her Majesty in council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the judicial committee of the privy council from directing witnesses to be examined and re-examined upon such facts as to the committee shall seem fit, in the manner directed by the last-recited act.

18. *Power for Judge of Admiralty to make rules of Court.*—And be it enacted, that it shall be lawful for the Judge of the said High Court of Admiralty from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: Provided always, that no such rules, orders, or regulations shall be of any force or effect until the same shall have been approved by her Majesty in council.

19. *Protection of the judge of the Court of Admiralty.*—And be it declared and enacted, that no action shall lie against the judge of the said High Court of Admiralty for error in

judgment, and that the said judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as judge of the said court which by law appertain to the judges of her Majesty’s Superior Courts of Common Law in the exercise of their several jurisdictions.

20. *Gaolers to receive prisoners committed by the Court of Admiralty or by Admiralty Coroners.*—And be it enacted, that the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the judge of the said Court of Admiralty upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and get at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

21. *Prisoners in contempt may be discharged.*—And be it enacted that it shall be lawful for the judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said Court for any cause other than for non-payment of money on such conditions as to the judge shall seem just: provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

22. *Jurisdiction to try questions concerning booty of war.*—And be it enacted, that the said High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy Council to refer to the judgment of the said Court; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

23. *Jurisdiction of Courts of Law and Equity not taken away.*—Provided always, and be it enacted, that nothing herein contained shall be deemed to preclude any of her Majesty’s Courts of Law or Equity now having jurisdiction over the several subject-matters and causes of action herein-before mentioned from continuing to exercise such jurisdiction as fully as if this act had not been passed.

24. *Act may be amended this session.*—And be it enacted, that this act may be repealed or amended by any act to be passed in this session of parliament.

PARLIAMENTARY AGENCY.

To the Editor of *The Legal Observer*.

Sir,

YOUR correspondent, "A Solicitor," (p. 314) mistakes me, if he supposes I intended to impute a want of zeal or attention to the present parliamentary agents. I merely wish to draw the attention of the London profession to what is a fair and legitimate field of practice, and where legal knowledge, and a professional education, cannot fail to have their due weight and influence with every solicitor who has to select a parliamentary agent.

In regard to the advance of fees by the solicitor, and the refusal to make any allowance on the principle of attorney and agent, your correspondent, doubtless, is acquainted with the instances he mentioned, where the agent has made advances and been the loser, and where allowances have been made to the solicitor. But if he will take the trouble of enquiring amongst the leading parliamentary agents, I am sure he will find the instances he refers to exceptions to the general rule, which for the last twenty-five years I have found to prevail: namely, that the House fees shall be advanced on the second reading of a bill, and that no allowance shall be made to the solicitor by the agent, who expects, and usually receives, his bill at the close of the session.

I do not intend to discuss the question, whether parliamentary agency is worth the attention of the London solicitors; all I assert is, that if they undertake it, they will not fail to have the support of the profession in the country; and, unless I am greatly misinformed, the apprenticeship which your correspondent speaks of has in several instances been a very short one.

Let a junior partner of a London office, of standing connections, devote his time exclusively, for the session, to parliamentary agency, and there is little doubt after a very short probation, with attention and industry, he will prove to have added to the joint stock fund more than he could have done in any other department of the profession, within the same space of time.

A CONSTANT READER AT MANCHESTER.

THE STUDENT'S CORNER.

WILL OF LEASEHOLDS.

It is quite clear that the legacy in the case stated at p. 265, *ante*, has lapsed. This point has been so long considered settled, that there are no modern decisions to be met with on the subject. It was, however, decided in *El-liot v. Davenport*, 1 P. W. 83, which case has never been overruled.

To whom the property now belongs it is impossible to say on the facts stated by "A Subscriber." If the will contains a general residuary clause, the lapsed legacy will fall into the residue, and pass with it to the resi-

duary legatee. If not there is *quod hoc*, an intestacy, and the executors take in trust for the next of kin. If the testator left a father, he will be solely entitled. 2 Bla. Com. 516. If he left a mother, but no father, she will take one-third, and the sister's son and the brother's children will take the other two-thirds equally, *per stirpes*, 1 Jac. 2, c. 17; *Stanley v. Stanley*, 1 Atk. 458. If the testator left any uncles or aunts, but no father or mother, they and the nephews and nieces will be entitled equally *per capita*. *Durant v. Prestwood*, 1 Atk. 455. But if he left neither father, mother, uncle, or aunt, then the sister's son and the children of the brother are entitled *per capita*. *Walsh v. Walsh*, Pre. Cha. 54. I have omitted the improbable contingency of the testator leaving a grandfather or grandmother. They take, in default of father, mother, brothers, or sisters, to the exclusion of uncles, aunts, nephews and nieces. *Black-borough v. Davies*, 1 P. W. 41; *Woodroffe v. Wichworth*, Pre. Cha. 527.

Letters of administration to the brother's estate are unnecessary, as his children take as the testator's next of kin, and not through their father. *Walsh v. Walsh*, Pre. Cha. 54.

"A Subscriber" appears to think the bequest would not have lapsed, had the date of the will been subsequent to 1st January, 1838, when the new Will Act, 1 Vict. c. 26, came into operation. This opinion is erroneous. That act prevents a lapse in two cases only; where real estate is devised for an estate tail, or an estate in *quasi* tail, and where real or personal estate is devised or bequeathed to a child or other issue of the testator, neither of which is the case here.

A. C.

SELECTIONS FROM CORRESPONDENCE.

LOCAL COURTS' JURISDICTION.

Believing the point to be little known in the profession, I beg to acquaint you, for the information of your readers, that it seems indispensable that both plaintiff and defendant must be actual residents within the limited district. In the Southwark Court of Record (in which debts to any amount may be sued for) process was issued against a defendant whose actual residence was in Westminster, he was however served with process in Southwark, but the proceedings were afterwards set aside on the ground of his not being an inhabitant of the borough.

CIVIS A.

AFFIRMATIONS.

I have just read the article at p. 291, on affirmations. Nothing can be more clear than the absurdity of many of our present rules of evidence, by which the testimony of conscientious men is rejected, because they adhere literally to the gospel precept of "swear not at all." As the inevitable and only consequence of the rejection of any relevant evidence (I

speak of facts to be proved, not using the word technically) must be a denial or evasion of justice, and as by the present mode the evil is done before a remedy is thought necessary, how much better would it be to enact general principles instead of specific cases, and declare all evidence to be admissible, leaving, of course, its proper weight to the judgment of the court!

A correct principle appears to me to be laid down in the act 1 & 2 Vict. c. 105, by which it is declared and enacted "That in all cases in which an oath may be and shall have been administered to any person, either as a jurymen, or a witness, or a deponent in any proceeding, civil or criminal, in any court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding," &c. This enactment meets only the case of persons willing to *swear*, and not of those who object to oaths *in toto*; but a similar rule as to affirmations would render the rejection of testimony on account of religious scruples impossible. But I have some doubts whether the enactment just quoted is prospective or retrospective only; the first part is "in which an oath may be and shall have been," seemingly making the past essential by the use of the copulative injunction; had the disjunctive "or" been used, I should have entertained no doubt. But then, on the other hand, in the latter part the words are "may declare to be binding" which infers a future swearing; as, if the intention were to legalise past oaths only, the words would have been "may have declared."

W. C.

LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC,
AND TO BE JUDICIALLY NOTICED.

[Continued from p. 380.]

3 & 4 Vict.

- CAP. 15.—An act to enable the Manchester and Salford Junction Canal Company to raise a further sum of money; and to alter, amend, and enlarge some of the powers and provisions of the act relating to the same canal.
- CAP. 16.—An act to continue and amend an act for erecting a bridge over the river Almond, which divides the counties of Edinburgh and Linlithgow.
- CAP. 17.—An act for abolishing certain petty and market customs in the city of Edinburgh, and granting other duties in lieu thereof.
- CAP. 18.—An act for the more easy and speedy recovery of small debts within the town of Bolton and other places, in the county of Lancaster.
- CAP. 19.—An act to enable the Thames Plate Glass Company to sue and be sued in the name of the chairman or deputy

chairman, or secretary, or any one of the directors for the time being of the said company; and for other purposes.

- CAP. 20.—An act to enable the Protestant Dissenters, and General Life and Fire Insurance Company to sue and be sued in the name of the chairman, deputy chairman, or any one of the directors, or of the secretary of the said company.
- CAP. 21.—An act for making and repairing several roads in and leading to and from the town of Warminster, in the county of Wilts.
- CAP. 22.—An act for making and maintaining a new road, from the road at Worle to a road in the parish of Kewstoke, leading to Locking and Weston-super-Mare, in the county of Somerset.
- CAP. 23.—An act to amend and explain some of the provisions of the acts relating to the General Steam Navigation Company.
- CAP. 24.—An act for consolidating the Wyrley and Essington Canal Navigation with the Birmingham Canal Navigations, and for granting further powers to the company of proprietors of the Birmingham Canal Navigations.
- CAP. 25.—An act for the more easy and speedy recovery of small debts within the township of Newton Abbot, and other townships, parishes, and places, all in the county of Devon.
- CAP. 26.—An act for making and maintaining a new bridge over the river Aire at Leeds, at or near a place called Crown Point, with suitable approaches thereto; and for making certain drains or water-courses under the roads leading to such bridge, and through the adjoining lands, to communicate with the river Aire below the Leeds locks.
- CAP. 27.—An act for the further improvement of the town of Greenock; for better lighting and supplying the same with water; for regulating the police thereof; and for other purposes connected therewith.
- CAP. 28.—An act to continue the term and amend and alter the powers of an act for regulating the police of the burgh of Calton and village and lands of Mile End, in the county of Lanark.
- CAP. 29.—An act to continue, enlarge, and explain several acts for erecting a bridewell for the county of Lanark and city of Glasgow.
- CAP. 30.—An act to authorise the transfer to more than twelve persons of certain patents granted to the Marquis of Tweeddale relating to the manufacture of drain-tiles, bricks, and other articles, and for the establishment of a company for carrying out the objects of the said patents.
- CAP. 31.—An act for more effectually repairing the road from Basingstoke in the county of Southampton to Lobcombe Corner in the county of Wilts, and other roads therein described; and for making a new road from the said road at the eastern entrance of the town of Andover to the Warren Farm station on the London and South-western Railway in the said county of Southampton.
- CAP. 32.—An act for repairing and improving

the road from Macclesfield to Congleton in the county of Chester.

CAP. 33.—An act for extending the jurisdiction of the Barkston-Ash and Shyrack Court of Requests, and the powers and provisions of the act passed constituting such court, to certain places in the west and east ridings of the county of York, and amending the same act.

CAP. 34.—An act for repairing and improving the roads from Lobcombe Corner in the parish of Winterslow to the city of New Sarum in the county of Wilts, and from the said city to Landford and other roads in the county of Southampton.

CAP. 35.—An act for more effectually repairing and improving certain roads near Torquay, Paignton, Brixham, Kingswear, Newton Abbot, and Shaldon, and for making certain new roads connected therewith, all in the county of Devon.

CAP. 36.—An act for more effectually repairing several roads leading from the town of Taunton in the county of Somerset, and for making several deviations and new lines of road connected therewith.

CAP. 37.—An act for more effectually repairing the road from the Honiton turnpike road near Yard Farm in the parish of Upottery in the county of Devon, towards Ilminster, to the eastern boundary of the parish of Buckland Saint Mary in the county of Somerset: and for making, maintaining, and repairing several other roads communicating therewith in the counties of Devon, Somerset, and Dorset.

CAP. 38.—An act for repairing and maintaining a road from Banbury in the county of Oxford to Lutterworth in the county of Leicester, and other roads communicating therewith.

CAP. 39.—An act for maintaining and repairing the road from Causeway Head near Stirling, through the county of Clackmannan, by the foot of the Orhill Hills, towards Queensferry, and certain roads branching out of the same.

CAP. 40.—An act to alter and amend several acts for making, maintaining, and keeping in repair certain roads in the counties of Clackmannan and Perth; and for other purposes relating thereto.

CAP. 41.—An act to enable the Scottish Widows Fund and Life Assurance Society to sue and be sued; and for other purposes relating to the said society.

CAP. 42.—An act for better lighting and supplying with gas the town and neighbourhood of Dewsbury in the west riding of the county of York.

CAP. 43.—An act for amending the powers and provisions of several acts relating to the holding of markets in the town of Taunton in the county of Somerset, and to the improvement of the said town.

CAP. 44.—An act for regulating and preserving the harbour of Workington in the county of Cumberland, and for other purposes relating thereto.

[To be continued.]

SUPERIOR COURTS.

Rolls Court.

SALE BY AUCTION.—INTERPLEADER.

After an estate has been re-sold by auction in consequence of the purchaser's default in completing his contract, the Court will restrain the second purchaser from proceeding at law to recover his deposit, pending a suit instituted by the first purchaser for a specific performance.

On the 19th of June 1835, the plaintiff, who is an auctioneer, and who acted as the agent for another party, sold the estate in the pleadings mentioned by auction, and the defendant Cutts, having become the purchaser for 370*l.*, paid a deposit of 174*l.* One of the conditions of sale under which the defendant purchased, was, that in the event of the purchaser not completing his contract, the vendor should be at liberty to re-sell the property. The defendant made certain objections to the title which he required to have removed, but expressed his willingness to complete his contract, and gave notice to the plaintiff not to re-sell the premises. Notwithstanding this warning the plaintiff again put the premises up to sale, and thereupon the defendant Vickers, became the purchaser for 640*l.*, who also having refused to complete his contract on the ground of the title being defective, the vendor called upon the plaintiff to pay over to him both the deposits, and on his refusal to do so, commenced an action against him. Meanwhile the defendant Cutts, filed a bill against the vendor for specific performance, but declined to move for an injunction to restrain him from proceeding at law against the plaintiff. The defendant Vickers, also insisting upon having his contract completed, and requiring the title to be made perfect, the plaintiff filed his present bill to have the money received by him for the deposits paid into Court, and to restrain the vendor from proceeding further with his action. On the 8th of June last, the money was ordered to be brought into Court, and an injunction was granted, restraining the defendants and the vendor from proceeding against the plaintiff until the questions between the parties should have been determined. A motion was subsequently made to dissolve the injunction, and the Court having, after full argument, required time to consider the several points urged,

The *Master of the Rolls* now delivered judgment. His Lordship said—"The defendant Vickers claims to be paid back the deposit received from him, whilst the defendant Cutts still insists that he is entitled to a specific performance of the contract entered into with him, and holds the plaintiff liable to any loss or damage that may be sustained by him by reason of its non-fulfilment. The answers do not either of them suggest any objection to the plaintiff's right to be indemnified, and he is placed in this actual difficulty; he held the deposit subject to certain conditions; for if a good title was not shewn, the defendant Cutts was entitled to require him

not to part with the deposit paid by him, and the defendant Vickers might insist that as such good title could not be made to appear, he had a right to be paid back the sums of 262l., which he had paid as a deposit. As to the whole amount of the money in the plaintiff's hands, there is no question between Cutts and Vickers. The vendor alone wishes to treat this as a question of interpleader, and so far as any legal question extends, this might perhaps be done; but that is not the proper mode of determining the equitable rights of these parties. If the plaintiff can make a good title, and Cutts is to have a specific performance, then he is not entitled to retain the deposit made by Vickers, and so if Cutts has failed in performance of his contract, and Vickers can insist upon completion of his purchase, the deposit paid by him must be retained. Is the plaintiff then to have no protection against these conflicting claims? His Lordship said he agreed with some of the arguments urged on behalf of Cutts and Vickers, and if the facts contained in these arguments had appeared upon the answers, they might have had a material influence on his decision, but the plaintiff's attention not having been called to them, he could not allow the case set up by them to be of any avail, when, according to the pleadings, the plaintiff's right to an indemnity was not disputed. He had, however, some difficulty in determining the course which the parties ought to pursue. In *Angel v. Hadden*, 16 Ves. 202, Sir W. Grant said, "If at the hearing, the question is ripe for decision, the Court decides it; and if it is not ripe for decision, directs an action, or an issue, or a reference to the Master as may be best suited to the nature of the case," and having regard to the circumstances of this case—that the questions were not ripe for decision, he ought to order the injunction to be continued, and the plaintiff to have his costs out of the fund in Court, the defendant Cutts to proceed with his suit with all possible dispatch.

Hoggart v. Cutts, August 3d, 1840. M. R.

Queen's Bench.

[Before the Four Judges.]

ECCLESIASTICAL COURT.—PROHIBITION.

A suit for nonpayment of church rates may, notwithstanding the stat. 23 Hen. 8, c. 9, be instituted in the Court of Arches, in a case where the defendant resides within the diocese of a provincial bishop, and consequently where the defendant is necessarily cited out of the diocese in which he resides. A mere irregularity in an Ecclesiastical Court will not warrant a prohibition.

In this case a rule had been obtained for a prohibition to the Court of Arches to restrain the plaintiffs from further prosecuting in that Court a suit for the payment of church rates. The plaintiffs were the churchwardens of the parish of St. Margaret's, Leicester, and the defendant was one of the inhabitants of that parish. The defendant had been rated in a

sum of 2l. 5s., and having refused to pay the same, he was summoned before the magistrates, when he raised objections to the legality of the rate. As these objections prevented the magistrates from proceeding further in the matter, the plaintiffs went to the Court of the Arches, and there the defendant was summoned to appear under the process of a letter of request. The defendant took no notice of the summons, and the cause proceeded regularly to sentence. The ordinary *significavit* issued, and then a writ *de contumace capi-endo*. The defendant then applied to this Court, and obtained the present rule. The first objection taken in prohibition was, that the Archdeacon's Court had no jurisdiction to entertain a suit of this sort by virtue of a letter of request from the commissary, for that this was not a case excepted out of the operation of the statute 23 Hen. 8, c. 9, which was an act to prevent persons being cited out of the diocese where they resided, except for causes of heresy. The second objection was, that the proceedings in the Ecclesiastical Court were contrary to the directions of the 10 Geo. 4, c. 53, as to the forms in which the depositions in the case were taken.

Mr. *Wightman*, in Easter Term, shewed cause against the rule. The first objection, which goes to the jurisdiction of the Court, cannot be sustained. The statute allows a party to be cited out of the diocese in which he dwells, where "any bishop or any inferior judge having under him jurisdiction in his own right and title, makes request or instance to the archbishop or his substitutes." That clause in the statute has been held sufficient to justify a suit by letter of request in the Arches, where the party was summoned for brawling in a church. *Es parte Williams*.^a But even if this objection could be good for anything, it is now too late to press it. *Ottley v. Whitehall*.^b It is impossible to see how the second objection arises, for the 10 Geo. 4, c. 53, is merely an act for regulating the salaries of the officers of the Court. The objection, if valid, is one of mere irregularity, and cannot justify the issuing of a writ of prohibition.

The *Attorney General* and Mr. Serjt. *Manning*, in support of the rule.—*Es parte Williams* does not apply here, for brawling in a church was a case cognizable in the Ecclesiastical Court before the statute of Hen. 8, and therefore was held not to be within that statute. The Court here is clearly exceeding its jurisdiction, for the legality of a rate depends on the construction of acts of parliament, and the Courts of Common Law can alone construe them. *Carter v. Crawley*.^c The summoning of the defendant out of his diocese is an abuse which it was the express object of the statute of Henry 8 to prevent, and the Courts will not favour a practice prohibited by statute, and productive of the most vexatious inconvenience and expence. The second objection is one of

^a 4 Barn. & Cress. 313.

^b Bunb. 17.

^c Sir T. Raym. 496.

more than mere irregularity. The stat. 10 Geo. 4 directed that the Ecclesiastical Courts should lay down rules for the regulation of their proceedings. They have done so, and yet the depositions in this case have not been taken according to those regulations. In a case where the jurisdiction itself was more than doubtful, the Court will watch matters of irregularity with strictness.

Cur. adv. vult.

Lord Denman, C. J., now delivered judgment. This was a motion for a prohibition to the Court of Arches in a suit for the subtraction of church-rate. There were two objections taken to the suit; first, that the deposition was wrong under the 10 Geo. 4, c. 53, s. 9. The answer to this objection was, that the matter objected to was a mere irregularity, and we are of that opinion. The second objection was, that the party was cited out of the diocese in which he resided, which it was said was unlawful by the law civil, and by the statute law, and the stat. of 23 Hen. 8, c. 9, was referred to. We do not find any authority for saying that such a mode of proceeding is erroneous in this case, nor is there any ground shewn why there should not be a suit in the Arches for the subtraction of church rates as well as for the subtraction of tithes by virtue of a letter of request. We have enquired, and find that many suits have been instituted by a letter of request, and that there never has been any objection to suits of this sort upon this ground, though a prohibition has before now been granted on other grounds. We think that the letter of request is a proper mode of proceeding in a case like the present, and that the rule must therefore be discharged.

Jolly and another v. Barnes, T. T. 1840. Q. B. F. J.

RIGHT TO FISH—PLEADING.

In an action of trespass for taking the soil of a river and the oyster spat adhering thereto, the defendant pleaded the common right of all subjects to fish in a navigable river. The replication set forth that the spat was the brood of young oysters, and traversed the right to take the soil of the river and the spat. The rejoinder alleged an immemorial right in the subjects to take spat in the said river: Held, that on the face of the pleadings, it was sufficiently shewn that the spat was the young oysters, and that the defendant did not set up any right to take the young of fish, and therefore did not answer the allegation in the declaration.

Trespass for fishing in the Blackwater River, and removing the soil, and carrying off the oysters and oyster spat therein. Plea, that the Blackwater was a navigable river or arm of the sea, and that all the Queen's subjects had a right to fish therein. Replication, that the spat was the brood of young oysters adhering to the soil, and that there was no liberty to the Queen's subjects to remove the soil of the said river or arm of the sea, and the oyster spat adhering to such soil; rejoinder, that

there was an immemorial right to take spat there; Demurrer and joinder. The case was argued in Michaelmas Term, 1839.

Mr. Serjeant Stephen (with whom was Mr. Channell) for the plaintiff.—*Prima facie*, every subject of the realm has a right to fish in salt water. In *Carter v. Thurcot*,^a it was held that a subject might have an exclusive privilege of fishing even in an arm of the sea. But that does not give him the right of dredging for oysters. The same principle does not apply in the two cases. In *Bagot v. Orr*,^b it was indeed at first argued that the general right of the public to take fish in the sea, must be supposed to include the taking of shell fish; but there is no authority for such a proposition, and the court there would not pronounce in favour of it. But whatever may be the case as to other matters, it is clearly illegal to take the spawn of fish, and especially of oysters. There has been a variety of statutes from the 12th of Rich. 2, downwards, passed to preserve the spawn of fish from destruction. In *Bridger v. Richardson*,^c it was held that it was no offence under the 3d of James I, c. 12, to take up oyster spat, it being proved there that the spat was taken up, not for the purpose of destruction, but of improvement; but in order to bring the present case within that rule, the defendant should have pleaded that what he did was for the purpose of improvement. The plea justifying the taking of fish will not justify the taking of oyster-spat; it must be taken on the face of the plea that the object was to take the full grown oyster, then the declaration alleges a taking of oyster-spat, and the defendant neither shews a right to take the spat, nor does he plead that in the taking of the fish, he necessarily and unavoidably took up the spat, but immediately after threw the spat back into the sea. The plea is therefore insufficient in law, and does not set up a right which the defendant can maintain.

Mr. Wightman, *contrâ*.—The right of the public to fish in navigable rivers is not denied; but in the books where this right is admitted there is no distinction taken between shell fish and other fish, and the right of the public is the same with respect to both. [Lord Denman, C. J.—Oysters are fish, and we must take them to be so, but we have no judicial knowledge of the fact that the spat is the spawn of the oyster, nor is that fact brought before us judicially to our knowledge.] In *Bridger v. Richardson*, the Court said that this restraining act did not apply to shell fish. All the acts referring to the oyster fisheries are acts specially relating to the Thames and Medway, and cannot be brought in to assist the plaintiff in this discussion. [Mr. Justice Patterson.—You would have an excuse for the trespass if you shewed that you had taken the spat for a legal purpose; but have you done that?] It cannot be presumed that the purpose was illegal. The plaintiff should shew that it was so, for his action is in restraint of what is con-

^a 4 Burr. 2163.

^b 2 Bos. & Pul. 472.

^c 2 Maule & S. 568.

ceded to be a common-law right. If that was shewn, the defendant might set up in answer that he had an exclusive right of taking the spat for any purposes. It must be assumed on the face of these pleadings, that the spat are fish, and then the justification is complete.

Mr. Serjeant *Stephen* in reply.—No such presumption can be made, and the defendant who sets up a right to trespass over the soil of the plaintiff, must prove his right in the clearest manner.

Cur. adv. vult.

Lord *Denman*, C. J., now (Trin. Term. 1840) delivered judgment.—This was an action of trespass for fishing in the Blackwater River, and removing the soil and carrying off the oysters and oyster-spat therein. Plea, that the defendant had a right to fish in a navigable river. Replication, that the spat was the young brood of oysters adhering to the soil, and that there was no liberty of fishing and removing the soil in the said river; rejoinder that there was an immemorial right in all the Queen's subjects to take spat there. The question on these pleadings is, whether there is any right to remove the soil of the river and the spat adhering thereto. The preservation of young fish has been for centuries a favorite object of the legislature, and the statutes passed upon the subject have been numerous. If there is any custom or statute authorising the Queen's subjects to take fish in this river, the defendant could not under that defend himself in an action for taking the spawn. Here the declaration charges the taking of the spat; if the declaration had shewn that the spat was the spawn of fish but not fish, it would have been without an answer on these pleadings, but it has not done so; however, the defect of the declaration in that respect is remedied by the replication, and by the defendant's permitting the allegation there made to go uncontradicted. Both parties in their pleadings have described the spat as the spawn of the young brood of oysters. The taking of the spawn is sufficiently proved to be unlawful within the statute of Richard II, and other statutes which have not been repealed. There is, therefore, a sufficient allegation of an unlawful act of trespass, and there is no legal answer by immemorial custom or otherwise, to that allegation. The plaintiff is consequently entitled to judgment, as the defendant has not in his pleadings brought himself within the case of a lawful exercise of any immemorial public right.

Judgment for the plaintiff.—*The Mayor of Maldon v. Woolret*, T. T. 1840. Q. B. F. J.

CORPORATION PROPERTY.—RATEABILITY.

The property of a corporation, though situated in a parish which does not form part of the corporate town, is not liable to be rated to such parish.

This case being but the application of a principle already fully discussed (see 17 L. O. 219), it has not been thought necessary to give more than the judgment.

Lord *Denman*, C. J., delivered judgment.—The question in this case was, whether the corporation was rateable in respect of tolls received from property belonging to it in another parish; in other words, whether a parish not forming part of a corporation was to be deprived of the right to take rates upon property (otherwise rateable) because it belonged to a corporation. It was insisted in the argument that the fact that this property existed in another parish, distinguished this case from that of the *King v. The Corporation of Liverpool*.^a On considering the point, we have come to the conclusion that this forms no distinction as to the principle which must apply to the rateability of corporate property; and as we have held that corporate property is on account of its nature and object, and by the terms of the 92d section of the Municipal Corporation Act, exempted from rateability in the hands of a corporation, so we must hold that it is equally not rateable, whether its situation is in the parish where the corporation locally exists, or in another parish. This decision we came to on the words of the statute itself, and on full consideration of the numerous cases that have been decided on this subject of rating. We are still of opinion that that was a proper conclusion, and that this case must be decided in the same manner. The order of sessions, therefore, quashing this rate, was right, and must be confirmed.

The Queen v. Mayor and Town Council of Exminster, T. T. 1840. Q. B. F. J.

THE EDITOR'S LETTER BOX.

We believe that answers to a majority of the questions in Common Law, Conveyancing, and Criminal Law, without any answers in *Equity*, will not entitle the applicant to the Examiners' certificate. They cannot certify that he is fit and capable to act as a solicitor, if he cannot answer any of the questions in *Equity*.

The letters of C. W. M.; A. B.; and A. C.; have been received.

J. H. will learn from his bookseller the latest edition of the Law of Landlord and Tenant: we cannot undertake to say which is the best.

Again we beg to say that the moot points which we are willing to insert must shew some previous research. We are very anxious on the one hand to pay due respect to our correspondents; but on the other, we must consider what our readers have a right to expect.

We are much obliged to T. H. L. for his suggestions regarding the *Legal Almanac*. Interleaving will be the more convenient way to suit such subscribers as require it.

^a *Ante*, 17 L. O. 219.

The Legal Observer.

SATURDAY, SEPTEMBER 26, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

AT the close of the Session of Parliament in 1839, we directed the attention of our readers to the improvements which had been made in that Session in transacting the private business of the House of Commons; and we now propose seeing how far the good work has been carried on in the Session just closed. We have already said that however interesting or important the public business of parliament may be to the profession, it is the private business which more particularly concerns them, as this they may have to carry on themselves. The alterations which have recently been made have unquestionably improved the tribunal before which this business is to be conducted—the private committees. They go to constitute them a judicial body; and the nearer approach which can be made to this, the better, in our opinion, the tribunal will be.

The system of canvassing members to vote, whether they had heard the evidence or not—the open disregard of the usual rules of a court of justice—are at any rate no longer seen; and we have now in many respects a tribunal in which confidence may be justly placed. But while we fully allow this, we think that much remains to be done in the work of improvement; and let us therefore see what is further proposed by the Select Committee on Private Business. In the resolutions contained in their Second Report, which we have already printed,^a they say that “as there are conflicting opinions in regard to the advantage derived from the service on committees on opposed private bills, of members having

local knowledge of the matters to which such bills refer, or whose constituents are interested therein, it would be inexpedient, without further experience, so far to assimilate the system of this House to that adopted by the House of Lords, as to convert such committees into purely judicial bodies, and by consequence, to exclude therefrom all members that have local knowledge, or whose constituents are locally interested.” Now here we differ with the recommendation of the committee. The private committee to which the bill is referred should decide according to the evidence produced before them, and not according to private information or bias to their constituents. They sit, in discharging this part of their duty, strictly in a judicial capacity, and have to decide on the rights and property of others. If a member has any peculiar information on the subject, he may be examined as a witness, but he should not be allowed to be a judge: the rights of all parties should be properly represented by professional men, or by themselves, if they see fit; but a member of parliament in this matter, should be as much excluded on account of bias, or even suspicion of bias, as a judge or a jurymen. It is impossible to prevent this bias from existing in any tribunal; but we may make rules which will have the effect of excluding it as much as possible. It is for these reasons that we prefer the resolutions proposed to be moved by Mr. Ewart: “That it is expedient that committees on private bills should be approximated more nearly than they now are to judicial tribunals, and exempted as much as possible from all motives of local and personal interest.”^b It may be also urged, that although according to the statement of

^a See *ante*, p. 248.

^b See them stated, *ante*, p. 217.

the Select Committee on Private business "great difficulty has arisen in procuring the attendance of disinterested members on committees, on unopposed private bills," yet there does not appear to have been any such difficulty with respect to *opposed* bills, and we are much inclined to think that in these bills a sufficient number of efficient disinterested members will be found ready and willing to discharge the duty; and that to them this business may be safely committed.

So far we disagree with the resolutions. But we are happy to say that we fully concur with the next recommendation of the committee, which relates to unopposed bills, which are now submitted to no scrutiny whatever in the House of Commons, and yet often require the greatest. In opposed bills, the truth is generally well-sifted by counsel or agents, but in unopposed bills under the present system, almost any thing may be done. The committee resolved that it would be expedient to adopt in the House of Commons a system analagous to that adopted by the House of Lords, and for this purpose to appoint an individual member to whose uniform scrutinizing examination every unopposed private bill, not being a divorce bill, should be submitted; and they further propose that the chairman of the Committee of Supply should be this member, with an additional salary of 500*l.* a-year, to the present chairman, (Mr. Bernal), to cease in case of any fresh appointment. This, we think, will be a great improvement in the mode of passing private unopposed bills. If to this be added the passing of model bills as formerly recommended by the committee on all the usual subjects of legislation of this kind, in which forms of all the ordinary clauses shall be given, thus establishing a uniformity in private acts; and if, moreover, the fees and expenses of the officers of the House of Commons be better regulated, this branch of the private business of Parliament will be placed on a much more satisfactory footing.

While on this subject, we would also advert to the Report of last session of the Select Committee on Standing Orders Revision, which has divided its labours into 1. The arrangement of the Standing Orders; and 2. The amendments to be made in the Standing Orders themselves. As to the arrangement of the orders, they are under their recommendations ranged under the four following heads, as agreed to 10th of August last. 1. The appointment of committees. 2. The duties of committees. 3. The

orders regulating the practice of the House as to private bills; and 4. The orders relating to the Private Bill Office. The chief alterations proposed are to reduce the quorum on a committee on petitions on unopposed private bills from five to three members; to embody the orders made in the last session as to the committee of selection; to propose that the Select Committee on Divorce Bills should be increased from nine to fifteen members, of whom five shall be a quorum; that notices shall be given in all cases of estate bills relating to crown, church, corporation, or charity property, held in trust for public or charitable purposes, in whichever House the bill shall originate; that notices to be inserted in the Gazette, shall be delivered at least two clear days previous to the publication of the Gazette; that so soon after the expiration of ten minutes, and not sooner, (instead of half-an-hour) after the time appointed for the first sitting of a committee on an opposed private bill, as there shall be five members duly qualified, business shall commence; various orders intended to provide for the absence of members appointed to serve; that every committee to whom any private bill shall have been referred, shall report the bill to the House, whether such committee shall or shall not have agreed to the preamble, or gone through the several clauses or any of them. This order is intended to secure to the House the ultimate disposal of every bill. New orders to carry into effect the recommendation of the committee as to the chairmanship on unopposed bills. Orders directing the preparation of breviate of private bills. That no private bills shall be passed through two stages on one and the same day, without the special leave of the House, and that no motion be made to dispense with any sessional or Standing Order without notice. These are the principal new orders, but many of the old ones are amended, and it will be requisite to consult them in case of need.

On the whole, the steps which have been recently taken to improve the mode of transacting the private business are creditable to the House of Commons, and more especially to the members who have taken the trouble and pains to revise the orders, and they will give satisfaction to the public, who often obtain, on the committees of the House of Commons, the services of the most valuable kind; and when the various proposed improvements are carried through, we consider that this portion of business which was formerly conducted in the most

slovenly, not to say disgraceful, manner, will be transacted ably and impartially, and with mutual benefit to the members who transact it, and to all parties coming before them.

ANCIENT LAWS AND INSTITUTES OF ENGLAND.

LAWS OF ALFRED.

WE continue from p. 339, *ante*, our extracts from the Laws of Alfred. The reader will not fail to observe the degrees of punishment inflicted on different offences, and the prices to be paid by the offender by way of recompense to the injured party.

The following institutes relate to various cases of *Homicide* and *Maiming*, some of which are taken out of the order in which they appear in the work, but which we have deemed it convenient to class together.

OF SLAYING A CHILD-BEARING WOMAN.

If a man kill a woman with her child, while the child is in her, let him pay for the woman her full "wer-gild," and pay for the child half a "wer-gild," according to the 'wēr' of the father's kin.

Let the 'wite' be always 1x shillings, until the 'angylde' rise to xxx shillings. After the 'angylde' has risen to that, let the 'wite' be cxx shillings. Formerly there was [a distinct 'wite'] for a gold thief, and a mare thief, and a bee-thief, and many 'wites' greater than others; now are all alike, except for a man-thief cxx shillings.

IF ONE MAN SLAY ANOTHER AT THEIR COMMON WORK.

If at their common work one man slay another unwillfully, let the tree be given to the kindred, and let them have it off the land within xxx days; or let him take possession of it who owns the wood.

OF THOSE MEN WHO LEND THEIR WEAPONS FOR MAN-SLAYING

If any one lend his weapon to another that he may kill some one therewith, they may join together if they will in the 'wēr'. If they will not join together, let him who lent the weapon pay of the 'wēr' a third part, and of the 'wite' a third part. If he be willing to justify himself, that he knew of no ill design in the loan; that he may do. If a sword polisher receive another man's weapon to furbish, or a smith a man's material, let them both return it sound as either of them may have before received it: unless either of them had before agreed that he should not hold it 'angylde.'

OF THE FIGHTING OF PRIESTS.

If a priest kill another man, let all in his home that he had bought be delivered up, and let the bishop secularise him; then let him be given up from the minister, unless the lord will compound for his 'wēr.'

[OF KINLESS MEN.]

If a man, kinless of paternal relatives, fight, and slay a man, and then if he have maternal relatives, let them pay a third of the 'wēr'; his guild-brethren a third part; for a third let him flee. If he have no maternal relatives, let his guild-brethren pay half: for half let him flee.

OF SLAYING A MAN THUS CIRCUMSTANCED.

If a man kill a man thus circumstanced, if he have no relatives, let half be paid to the king; half to his guild-brethren.

OF 'HLOTH'^a SLAYING OF A 'TWY-HYNDE'^b MAN.

If any one with a 'hloth' slay an unoffending 'twy-hynde' man, let him who acknowledges the death-blow pay 'wēr' and 'wite'; and let every one who was of the party pay xxx shillings as 'hloth-bōt.'

OF A 'SIX-HYNDE' MAN.^c

If it be a 'six-hynde' man, let every man pay 1x shillings as 'hloth-bōt'; and the slayer, 'wēr' and full 'wite.'

OF A 'TWELVE-HYNDE' MAN.^d

If he be a 'twelve-hynde' man, let each of them pay one hundred and twenty shillings; and the slayer 'wēr' and 'wite.' If a 'hloth' do this, and afterwards will deny it on oath, let them all be accused, and let them then all pay the 'wēr' in common; and all one 'wite,' such as shall belong to the 'wēr.'

The several fines or penalties to be paid for *wounding* another are regulated by the nature of the wound.

OF HEAD-WOUND.

For head-wound as 'bōt'; if the bones be both pierced, let xxx shillings be given him. If the outer bone be pierced, let xv shillings be given as 'bōt.'

OF HAIR-WOUND.

If within the hair there be a wound an inch long, let one shilling be given as 'bōt.' If before the hair there be a wound an inch long, two shillings as 'bōt.'

^a A number of men from seven to thirty-five.

^b A man whose wer-gild was 200s.

^c A man whose wer-gild was 600s.

^d The 'wer-gild' of persons of this rank was 1200s. [For explanations of other terms see p. 337, *ante*]

OF STRIKING OFF AN EAR.

If his other ear be struck off, let xxx shillings be given as 'bōt.' If the hearing be impaired, so that he cannot hear, let lx shillings be given as 'bot.'

OF A MAN'S EYE WOUND, AND OF VARIOUS OTHER LIMBS.

If a man strike out another's eye, let him pay lx shillings, and vi shillings and v pennies and a third part of a penny, as 'bōt.' If it remain in the head, and he cannot see aught therewith, let one third part of the 'bōt' be retained.

If a man strike off another's nose, let him make 'bōt' with lx shillings.

If a man strike out another's tooth in the front of his head, let him make 'bōt' for it with viii shillings: if it be the canine tooth, let iv shillings be paid as 'bōt.' A man's grinder is worth xv shillings.

If a man smite another's cheeks so that they be broken, let him make 'bōt' with xv shillings. A man's chin-bone, if it be cloven, let xii shillings be paid as 'bōt.'

If a man's wind-pipe be pierced, let 'bōt' be made with xii shillings.

If a man's tongue be done out of his head by another man's deeds, that shall be like as eye-'bōt.'

If a man be wounded on the shoulder so that the joint oil flow out, let 'bōt' be made with xxx shillings.

If the arm be broken above the elbow, there shall be xv shillings as 'bōt.'

If the arm shanks be both broken, the 'bōt' is xxx shillings.

If the thumb be struck off, for that shall be xxx as 'bōt.'

If the nail be struck off, for that shall be v shillings as 'bōt.'

If the shooting (that is fore) finger be struck off, the 'bōt' is xv shillings; for its nail it is iv shillings.

If the middlemost finger be struck off, the 'bōt' is xii shillings, and its nail's 'bōt' is ii shillings.

If the gold (*i. e.* ring) finger be struck off, for that shall be xvii shillings as 'bot'; and for its nail iv shillings as 'bōt.'

If the little finger be struck off, for that shall be as 'bōt' ix shillings; and for its nail one shilling, if that be struck off.

If a man be wounded in the belly, let xxx shillings be paid him as 'bōt'; if it be thorough-wounded, for either orifice, twenty shillings.

If a man's thigh be pierced, let xxx shillings be paid him as 'bōt'; if it be broken, the 'bōt' is likewise xxx shillings.

If the shank be pierced beneath the knee, there shall be twelve shillings as 'bōt'; if it be broken beneath the knee, let xxx shillings be paid him as 'bōt.'

If the great toe be struck off, let xx shillings be paid him as 'bōt'; if it be the second toe, let xv shillings be paid as 'bōt'; if it be the fourth toe, there shall be vi shillings as 'bōt'; if the little toe be struck off, let v shillings be paid him.

If a man's arm, with the hand, be entirely cut off before the elbow, let 'bōt' be made for it with lxxx shillings.

For every wound before the hair, and before the sleeve, and beneath the knee, the 'bōt' is two parts more.

If the loin be maimed, there shall be lx shillings as 'bōt'; if it be pierced, let xv shillings be paid as 'bōt'; if it be pierced through, then shall there be xxx shillings as 'bot.'

If a man be wounded in the shoulder, let 'bōt' be made with lxxx shillings, if the man be alive.

If a man wound another's hand outwardly let xx shillings be paid him as 'bōt,' if he can be healed; if it half fly off, then shall be xl shillings as 'bōt.'

If a man break another's rib within the whole skin, let x shillings be paid as 'bōt'; if the skin be broken, and bone be taken out, let xv shillings be paid as 'bōt.'

If a man strike out another's eye, or his hand or his foot off, there goeth like 'bōt' to all; vi pennies and vi shillings and lx shillings, and the third part of a penny.

If a man's shank be struck off near the knee, there shall be lxxx shillings as 'bōt.'

If a man fracture another's shoulder, let xx shillings be paid to him as 'bōt.'

If it be broken inwardly, and bone be taken out, let xv shillings (in addition) be paid as its 'bōt.'

If a man rupture the great sinew, if it can be healed so that it be sound, let xii shillings be paid as 'bōt.' If the man be halt on account of the wounded sinew, and he cannot be cured, let xxx shillings be paid as 'bōt.'

If the small sinew be ruptured, let vi shillings be paid as 'bōt.'

If a man rupture the tendons on another's neck, and wound them so severely that he has no power of them, and nevertheless live so maltreated; let c shillings be given him as 'bōt,' unless the 'witan' shall decree to him one juster and greater.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No. XX.

GRAMMAR SCHOOLS.

3 & 4 Vict. c. 77.

An Act for improving the Condition and extending the Benefits of Grammar Schools.
[7th August 1840.]

1. *Courts of Equity empowered, whenever a question comes before them, to make decrees or orders extending the system of education and the right of admission into any school, and to establish schemes for the application of its revenues, having due regard to the intentions of the founder.*—Whereas there are in England and Wales many endowed schools, both of royal and private foundation, for education of boys or youths wholly or principally in grammar;

and the term "grammar" has been construed by Courts of Equity as having reference only to the dead languages, that is to say, Greek and Latin. And whereas such education, at the period when such schools or the greater part were founded, was supposed not only to be sufficient to qualify boys or youths for admission to the universities, with a view to the learned professions, but also necessary for preparing them for the superior trades and mercantile business: And whereas from the change of times and other causes such education, without instruction in other branches of literature and science, is now of less value to those who are entitled to avail themselves of such charitable foundations, whereby such schools have, in many instances, ceased to afford a substantial fulfilment of the intentions of the founders; and the system of education in such grammar schools ought therefore to be extended and rendered more generally beneficial, in order to afford such fulfilment; but the patrons, visitors, and governors thereof are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her Majesty's Courts of Law and Equity are frequently unable to give adequate relief, and in no case but at considerable expence: And whereas in consequence of changes which have taken place in the population of particular districts it is necessary, for the purpose aforesaid, that in some cases the advantages of such grammar schools should be extended to boys other than those to whom by the terms of the foundations or the existing statutes the same is now limited, and that in other cases some restriction should be imposed, either with reference to the total number to be admitted into the school, or as regards their proficiency at the time when they may demand admission; but in this respect also the said patrons, visitors, and governors, and the Courts of Equity, are frequently without sufficient authority to make such extension or restriction: And whereas it is expedient that in certain cases grammar schools in the same place should be united: And whereas no remedy can be applied in the premises without the aid of Parliament: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whenever, after the passing of this act, any question may come under consideration in any of her Majesty's Courts of Equity concerning the system of education thereafter to be established in any grammar school, or the right of admission into the same, whether such question be already pending, or whether the same shall arise upon any information, petition, or other proceedings which may be now or at any time hereafter filed or instituted, for whatever cause the same may have been or may be instituted, according to the ordinary course of proceedings in Courts of Equity or under the provisions of this act, it shall be lawful for the Court to make such decrees or

orders as to the said Court shall seem expedient, as well for extending the system of education to other useful branches of literature and science in addition to or (subject to the provisions herein-after contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto, as free scholars or otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any schools as may in the opinion of the Court be conducive to the rendering or maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to declare at what period and upon what event such decrees or orders, or any directions contained therein, shall be brought into operation, and that such decrees and orders shall have force and effect notwithstanding any provisions contained in the instruments of foundation, endowment, or benefaction, or in the then existing statutes: Provided always, that in case there shall be any special visitor appointed by the founder, or other competent authority, opportunity shall be given to such visitor to be heard on the matters in question, in such manner as the Court shall think proper, previously to the making such decrees or orders.

2. *Before making such decrees the Courts shall consider the intentions of the founders, the state of school, &c.*—Provided always, and be it enacted, that in making any such decree or order, the Court shall consider and have regard to the intentions of the founders and benefactors of every such grammar school, the nature and extent of the foundation and endowment, the rights of parties interested therein, the statutes by which the same has been hitherto governed, the character of the instruction theretofore afforded therein, and the existing state and condition of the said school, and also the condition, rank, and number of the children entitled to and capable of enjoying the privilege of the said school, and of those who may become so capable if any extended or different system of education, or any extension of the right of admission to the said school, or any new statutes, shall be established.

3. *Court not to dispense with the principal objects, or the qualifications required, unless revenues are insufficient.*—Provided also, and be it enacted, that, unless it shall be found necessary from the insufficiency of the revenues of any grammar school, nothing in this act contained shall be construed as authorizing the Court to dispense with the teaching of Latin and Greek, or either of such languages, now required to be taught, or to treat such instruction otherwise than as the principal object of the foundation; nor to dispense

with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under-master.

4. *Standard of admission not to be lowered where Greek and Latin is retained.*—Provided also, and be it enacted, that in extending, as herein-before provided, the system of education or the right of admission into any grammar school in which the teaching of Greek or Latin shall be still retained, the Court shall not allow of the admission of children of an earlier age or of less proficiency than may be required by the foundation or existing statutes, or may be necessary to show that the children are of capacity to profit by the kind of education designed by the founder.

5. *Where the teaching of Greek and Latin is dispensed with, analogous instruction to be substituted, &c.*—Provided also, and be it enacted, that whenever, on account of the insufficiency of the revenues of any grammar school, the Court shall think fit to dispense with the teaching of Greek or Latin, the Court shall prescribe such a course of instruction, and shall require such qualifications in the children at the period of their admission, as will tend to maintain the character of the school as nearly as, with reference to the amount of the revenues, it may be analogous to that which was contemplated by the founder; and that whenever, on the like account, the Court shall think fit to dispense with any statute or provision as far as relates to the qualification of any schoolmaster or under master, the Court shall substitute such qualification as will provide for every object implied in the original qualification, which may be capable of being retained notwithstanding such insufficiency of the revenues.

6. *Qualifications of new schoolmasters and right of appointment regulated.*—Provided also, and be it enacted, that in case the appointment of any additional schoolmaster or under master shall be found necessary for the purpose of carrying the objects of this act into execution, the Court shall require the same qualification in such new schoolmaster or under master respectively as may be required by the existing statutes in the present schoolmaster or under master, except such as may be wholly referable to their capability of giving instruction in any particular branch of education; but that every other qualification implied in the qualification of the original schoolmaster or under master, and capable of being retained, shall be retained and required in such new schoolmaster or under master; and the Court shall also in such case declare in whom the appointment of such new schoolmaster or under master shall be vested, so as to preserve as far as may be the existing rights of all parties with regard to patronage.

7. *Schools to be grammar schools, though Greek and Latin dispensed with, and masters subject to the ordinary.*—Provided also, and be it enacted, that although under the provisions herein-before contained the teaching of Greek or Latin in any grammar school may be dispensed with, every such school, and the mas-

ters thereof, shall be still considered as grammar schools, and grammar schoolmasters, and shall continue subject to the jurisdiction of the ordinary as heretofore; and that no person shall be authorized to exercise the office of schoolmaster or under master therein without having such licence, or without having made such oath, declaration, or subscription as may be required by law of the schoolmasters or under masters respectively of other grammar schools.

8. *Extension of right of admission not to prejudice existing rights.*—Provided also, and be it enacted, that whenever the court shall think fit to extend the freedom of or the right of admission into any grammar school, such extension shall be so qualified by the Court that none of the boys who are by the foundation or existing statutes entitled to such privilege shall be excluded, by the admission of other boys into the said school, either from such school itself or from competition for any exhibition or other advantage connected therewith.

9. *Where several schools are in one place, and the revenues of any are insufficient, they may be united. Consents necessary to union.*—And be it enacted, that in case there shall be in any city, town, or place any grammar school or grammar schools, the revenues of which shall of themselves be insufficient to admit of the purposes of their founder or founders being effected, but which revenues if joined to the revenues of any other grammar school or grammar schools in the same city, town, or place would afford the means of effecting the purposes of the founders of such several schools, it shall be lawful for the Court of Chancery to direct such schools to be united, and the revenues of the schools so united to be applied to the support of one school to be formed by such union, and which shall be carried on according to a scheme to be settled for that purpose under the direction of the said Court: Provided always, that before application shall be made to the Court to direct such union the consent of the visitor, patron, and governors of every school to be effected thereby shall be first obtained.

10. *Present schoolmasters not to be affected, but to be at liberty to resign on receiving pensions.*—Provided always, and be it enacted, that no new statutes, affecting the duties or emoluments of any schoolmaster or under master shall be brought into operation as regards any such master who shall have been appointed previously to the passing of this act without his consent in writing; but that in case any such schoolmaster or under master as last aforesaid shall be unwilling to give such consent as aforesaid, and shall be desirous or willing to resign his office on receiving a retiring pension, it shall be lawful for the governors, if there be any competent to act, or if there be no such governors, for the visitor, to assign to such master such pension as to them or him (as the case may be) shall seem reasonable from the time of his resignation, which pension, if approved as hereinafter mentioned, the trustees of the said school are hereby au-

thorized and required to pay to him, or his order, according to the terms of such assignment.

11. *How new appointment of master to be made.*—And be it enacted, that any schoolmaster appointed in any grammar school after the passing of this act shall receive his appointment subject to such new statutes as may be made and confirmed by the Court of Chancery, in pursuance of any proceedings which may be commenced under this act, within six months after such vacancy shall have occurred.

12. *Lapse of right of nomination of master shall take place from time of settling the new statutes.*—Provided always, and be it enacted, that the term on the expiration of which any right of nomination or appointment of the master in any grammar school would otherwise lapse shall, on the first avoidance of the office which shall occur after the passing of this act, be computed from the time of the confirmation of the new statutes by which the school is to be in future governed, or if no proceedings are pending for the purpose of having statutes established from the expiration of the time within which such proceedings may be instituted, and not from the time of the avoidance.

13. *Where sufficient powers of discipline exist, the persons possessing to be at liberty to exercise them.*—‘And whereas it is expedient that the discipline of grammar schools should be more fully enforced;’ Be it declared and enacted, that in all cases in which sufficient powers, to be exercised by way of visitation or otherwise in respect of the discipline of such schools, shall already exist and be vested in any person or persons, it shall be lawful for such person or persons to exercise the same when and so often as they shall deem fit, either by themselves personally or by commission, without being first requested or required so to do, and likewise to direct such returns to be made by the masters of such schools, of the state thereof, of the books used therein, and of such other particulars as he or they may think proper, and also to order such examinations to be held into the proficiency of the scholars attending the same, as to him or them may seem expedient.

14. *Where such powers not sufficient, Court may enlarge them.*—And be it enacted, that in all cases in which any person or persons, having authority, by way of visitation or otherwise, in respect of the discipline of any grammar school, may not have sufficient power properly to enforce the same, it shall be lawful for the Court of Chancery to order and direct that the powers of such person or persons shall be enlarged to such extent and in such manner, and subject to such provisions, as to the said Court shall seem fit.

15. *Where no such powers, Court may create them.*—And be it enacted, that in all cases in which no authority to be exercised by way of visitation in respect of the discipline of any grammar school is now vested in any known person or persons, it shall be lawful for the bishop of the diocese wherein the same is

locally situated to apply to the Court of Chancery, stating the same; and the said Court shall have power, if it so think fit, to order that the said bishop shall be at liberty to visit and regulate the said school in respect of the discipline thereof, but not further or otherwise.

15. *Court of Chancery may substitute a person to act pro hac vice in certain cases. Proviso.*—And be it enacted, that in event of the person or persons by whom powers of visitation in respect of the discipline of any grammar school ought to be exercised refusing or neglecting so to do within a reasonable time after the same ought to be exercised, or in the event of its being uncertain in whom the right to exercise such powers is vested, such powers shall be exercised *pro hac vice* by some person specially appointed by the authority of the Court of Chancery, on application made by any person or persons interested in such grammar school: Provided always, that nothing herein contained shall exempt any visitor from being compelled by any process to which he is now amenable to perform any act which he is now compellable to perform.

17. *Court of Chancery to have power to appoint mode of removing Masters.*—And whereas it is expedient to provide for the more easy removal of unfit and improper masters; Be it declared and enacted, that it shall be lawful for the Court of Chancery to empower the person or persons having powers of visitation in respect of the discipline of any grammar school, or who shall be specially appointed to exercise the same under this act, and the governors, or either of them, after such enquiries and by such mode of proceeding as the Court shall direct, to remove any master of any grammar school who has been negligent in the discharge of his duties, or who is unfit or incompetent to discharge them properly and efficiently, either from immoral conduct, incapacity, age, or from any other infirmity or cause whatsoever.

18. *Power in certain cases to assign retiring pension.*—Provided always, and be it enacted, that in case the cause for which any master be removed shall be incompetency from age or other infirmity, it shall be lawful for the said governors, with the approbation of the visitor, to assign to the use of such master any portion of the annual revenues of the said grammar school in one or more donations, or by way of annuity, determinable on the death of such master, or on any other specified event during his life, or to assign to him any part of the estate of the said grammar school for his occupation for a term determinable in like manner; provided that there shall remain sufficient means to provide for the efficient performance of the duties which belong to the office from which such master shall be removed.

19. *Premises held over by masters dismissed, or ceasing to hold office, to be recovered in a summary way.* 1 & 2 Vict. c. 74.—And for the more speedy and effectual recovery of the possession of any premises belonging to any grammar school which the master who shall have been dismissed as aforesaid, or any person who shall have ceased to be master, shall hold

over after his dismissal or ceasing to be master, except under such assignment as may have been made under the provisions of this act, the term of such assignment being still unexpired, and the premises assigned being in the actual occupation of the master so dismissed or ceased to be master, be it enacted, that when and as often as any master holding any school-room, schoolhouse, or any other house, land, or tenement, by virtue of his office, or as tenant or otherwise under the trustees of the said grammar school, except on lease for a term of years still unexpired, shall have been dismissed as aforesaid, or shall have ceased to be master, and such master, or (if he shall not actually occupy the premises, or shall only occupy a part thereof,) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, except such as are herein before excepted, within the space of three months after such dismissal or ceasing to be master, it shall be lawful for the justices of the peace acting for the district or division in which such premises or any part thereof are situated, in petty sessions assembled, or any two of them, and they are hereby required, on the complaint of the said trustees or their agents, and on the production of an order of the Court of Chancery declaring such master to have been duly dismissed or to have ceased to be master, to issue a warrant, under their hands and seals, to the constables and peace officers of the said district or division, commanding them, within a period to be therein named, not less than ten nor more than twenty-one clear days from the date of such warrant, to enter into the premises, and give possession of the same to the said trustees or their agents, in such manner as any justices of the peace are empowered to give possession of any premises to any landlord or his agent under an act passed in the session of parliament, held in the first and second years of the reign of her present Majesty, intituled *An Act to facilitate the recovery of possession of tenements after due determination of the tenancy.*

20. *Master shall not set up title, &c.*—Provided always, and be it enacted, that nothing in this act or the said recited act shall extend or be construed to extend, to enable any master so dismissed, or ceasing to be master as aforesaid, to call in question the validity of such dismissal, provided that the same shall have proceeded from the persons authorized to order the same, after such inquiries and by such mode of proceeding as required in that behalf, or to call in question the title of the trustees to possession of any premises of which such master shall have become possessed by virtue of his late office, or as tenant or otherwise under the trustees of the said grammar school for the time being.

21. *Applications to Court to be made by petition. Such petitions to be decided under 52 G. 3, c. 101*—“And whereas it is expedient to facilitate applications to the Court of Chancery under this act;” be it enacted, that all appli-

cations may be heard and determined and all powers given by this act to the Court of Chancery may be exercised in cases brought before such Court by petition only, such petitions to be presented, heard, and determined according to the provisions of an act passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled “An act to provide a summary remedy in cases of abuses of trusts created for charitable purposes.”

22. *If Crown is patron, Lord High Chancellor or Chancellor of Duchy of Lancaster shall act.*—And be it enacted, that in every case in which the patronage of any grammar school, or right of appointing the schoolmaster or under master thereof, is vested in the Crown, the Lord High Chancellor, or the Chancellor of the Duchy of Lancaster in respect of any grammar school within the county palatine of Lancaster, shall be considered as the patron of such grammar school for the purposes of this act.

23. *Powers of Lord Chancellor to be exercised by Lord Keeper, &c.*—And be it enacted, that the powers and authorities herein-before given to the Lord High Chancellor shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Lords Commissioners for the custody of the Great Seal respectively for the time being.

24. *Saving of rights of ordinary. Certain foundations exempted from this act.*—Provided always, and be it enacted, that neither this act nor any thing therein contained shall be any way prejudicial or hurtful to the jurisdiction or power of the ordinary, but that he may lawfully execute and perform the same as heretofore he might according to the statutes, common law, and canons of this realm, and also as far as he may be further empowered by this act; and that this act shall not be construed as extending to any of the following institutions; (that is to say,) to the universities of Oxford or Cambridge, or to any college or hall within the same, or to the university of London, or any colleges connected therewith, or to the university of Durham, or to the colleges of Saint David's or Saint Bee's, or the grammar schools of Westminster, Eton, Winchester, Harrow, Charter House, Rugby, Merchant Tailors, Saint Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Louth, or such schools as form part of any cathedral or collegiate church.

25. *Construction of Terms.*—And be it enacted, that in the construction and for the purposes of this act, unless there be something in the subject or context repugnant to such construction, the word “grammar school” shall mean and include all endowed schools, whether of royal or other foundation, founded, endowed, or maintained for the purpose of teaching Latin and Greek, or either of such languages, whether in the instrument of foundation or endowment, or in the statutes or decree of any court of record, or in any act of parliament establishing such school, or in any other evidences or documents, such instruction shall be expressly described, or shall

be described by the word "grammar," or any other form of expression which is or may be construed as intending Greek or Latin, and whether by such evidences or documents as aforesaid, or in practice, such instruction be limited exclusively to Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them; and that the words "grammar school" shall not include schools not endowed, but shall mean and include all endowed schools which may be grammar schools by reputation, and all other charitable institutions and trusts, so far as the same may be for the purpose of providing such instruction as aforesaid; that the word "visitor" shall mean and include any person or persons in whom shall be vested solely or jointly the whole or such portion of the visitatorial power as regards the subject of the enactment or provision, or any powers in regard to the discipline or making of new statutes in any school; that the word "governors" shall mean and include all persons or corporations, whether sole or aggregate, by whatever name they may be styled, who may respectively have the government, management, or conduct of any grammar school, whether they have also any control over the revenues of the school as trustees or not; that the word "trustees" shall mean and include all persons and corporations, sole or aggregate, by whatever name they may be styled, who shall have the management, disposal, and controul over the revenues of any grammar school, whether the property be actually vested in them or not; that the word "statutes" shall mean and include all written rules and regulations by which the school, schoolmasters, or scholars are, shall, or ought to be governed, whether such rules or regulations are comprised in, incorporated with, or authorised by any royal or other charter, or other instrument of foundation, endowment, or benefaction, or declared or confirmed by act of parliament, or by decree of any court of record, and also all rules and regulations which shall be unwritten and established only by usage or reputation; that the word "schoolmaster" shall mean and include the head master only, and the words "under master" every master, usher, or assistant in any school except the head master; and that the word "master" shall mean and include as well any head master as under master; that the words "discipline" or "management" of a school shall mean and include all matters respecting the conduct of the masters or scholars, the method and times of teaching, the examination into the proficiency of the scholars of any school, and the ordering of returns or reports with reference to such particulars, or any of them; and that any word importing the singular number only shall mean and include several persons or things as well as one person or thing, and the converse.

26. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

NUMBER OF CHANCERY CAUSES, 6 JAS. 1.

A LEARNED correspondent informs us, that in the course of reading the ancient reports he arrived at the following passage, which he has extracted *verbatim*, as it shews upon authority what the number of causes in Chancery were about the period of the report:—a curious document in these days of Chancery Reform.

"The number of causes in Chancery.
Trinity 6 Jac. 1.

The case of the Lords Presidents of Wales and York.

"1st. Answer of the judges to an accusation against them, for granting prohibitions in greater number than heretofore, against the above-named Court.

"That they had exceedingly multiplied the number of causes, so as they have about two thousand depending at one time, and having but five counties and three towns; at one sitting there were about 450 causes at hearing, whereas, the *Chancery* that extends into 41 counties English and twelve in Wales, in all 53, had in Easter Term but 95 to be heard, and in Trinity Term but 72; &c. &c."

6 Co. 267.

PROPOSED LEGAL EXAMINATION DISTINCTIONS.

[We insert the following letter, as we understand the examiners are more disposed than they were to confer some distinction on the superior class of candidates. Our correspondent is mistaken in supposing the alteration to be determined on.]

Sir,

I hope you will allow me to express my satisfaction at the announcement which appeared in a recent number of your periodical, that distinctions will henceforward be conferred at our legal examination.

Having felt fully persuaded of the utility of such a step, I have advocated it by every means in my power, and by your favor I have been enabled to publish my sentiments.—I fear I have at times trespassed on your patience, especially in a letter which you inserted in your number of the 24th of August, 1839, which to many may have seemed a tedious one. But all will now be compensated for their trouble, whether as readers, writers, or grumblers, while all will acknowledge that by your insertion of letters bearing on the subject, you have promoted its discussion, and so hastened its ultimate success.

The point having been at last gained, I will

not allude to its opponents further than to express a hope that they will from this time join in rendering it as perfect as may be possible. They equally with us *could* have only one end in view, and that the benefit of our common profession; and this principle will doubtless now lead them to watch over and assist the alteration which leads to their own object, tho' by a different path.

I have one or two remarks to make as to the mode to be adopted for rewarding the successful candidates, which, by your permission, I will trouble you with.

As to the plan of giving prizes to two only of the examined, I should object to it as not being a sufficient stimulus to the main body. Considering that there are on the average at least one hundred young men for examination in each term, the chances would be fifty to one against any given individual; and this I think would operate to prevent many from entering the lists at all. We must look to the improvement of the profession by means of the plan in question, and that will hardly be effected by addressing a small proportion of the candidates. Some would neglect the means wholly from a sense of personal deficiency—others, throwing the blame on their previous education, would be content with a trifling exertion—while the diffident would in all cases feel that where the chance in their favor was so slight, it would be arrogance in *them* to compete for the prize.

By the plan I would propose, these difficulties would be remedied, and an answer would also be afforded to an objection which I have heard adduced by some against the general principle of granting the distinctions in question. The objection may certainly not be worth much, but if it can be fairly met and overcome, it may be as well to do so. The objectors alluded to say, that the distribution of honors in the way proposed is an unequal and improper way of testing the *substantial professional* merits of the candidates, because their respective advantages have been so different, owing to education, official treatment, or position. It seems a complete answer to this objection, that it is as it were in the nature of the thing, and that it prevails equally in *all other cases* where honors are awarded. Owing to the diversity of the human state and constitution, it is manifestly impossible to place all upon the same line, so as to insure an absolute equality in the start for *any prize* whatever. Such a condition, therefore, should not be required here. Success, however, thus becomes a *relative* term, and so far as it is considered a proof of merit is dependent on the circumstances of the individual, for all distinction conferred without reference to those circumstances would be unjust and absurd. This principle will doubtless influence the Examiners, who, in deciding on the deserts of the respective candidates, will weigh, as far as they are able, the talent, industry, conduct, situation, and *opportunities* of each, and will reward or punish him accordingly. It will, of course, be allowed, that in proportion as the prize is

awarded on a due estimate of these points, so does the system approach perfection, and on this account the scheme I have in view is entitled to *additional* notice.

My ideas on the subject have appeared in your journal of 24th August, 1839, but I will shortly repeat them here.

Under the *present* method, the examination papers are so distributed as to commit one branch of the subject to each of the acting Examiners. He then considers the answers of each candidate under that division, and decides upon their propriety accordingly.

Now I would *propose* that this gentleman should, in addition, mark the names of such ten of the examiners as in his opinion have shewn the greatest proficiency, and *number them according to merit*, as in the poll at Cambridge. Each Examiner doing the same in his division, there would thus be *separate lists* of proficiency in the *several branches* of the examination. Let these lists then be compared, and a result obtained as to the *general merit* of such candidates, and let a *general paper* be made out accordingly, allotting priority to the ten best men, on the same principle as in the other lists. Lastly, let the certificate of having passed contain a reference to the degree (if any) of the candidate in this *general list*, and then let *all* the lists be published by authority in some of the law periodicals, and a leading London newspaper.

By this plan, which requires no new organization, and will cause no extra expense, every candidate will be treated with entire justice. The indolent, the reckless, or the stupid, will be *properly* denied that which they have either been too careless or too weak to obtain; while the pains-taking will be gratified by a solace for his labours, and the ambitious be stimulated to increased efforts. If an examinant feels unequal to compass *every* branch, he may, by a close attention to a *single* one, win a pleasing notice in an *inferior* list. If through capacity and exertion he has mastered the *whole range*, he will gain what he has struggled for, and procure a proportionable place in the *superior* class. Each will thus be rewarded according to his merit, and all having an even chance, none can complain of failure.

If, in addition, the Examiners should confer *prizes* on a select few, I would say so much the better. This will be but a further application of my principle, and will provide an *extraordinary* gratification for those who have exhibited *extraordinary ability*.

I have now sketched the outlines of my plan, which I hope will receive your consideration. I have discussed it with several persons, and it has appeared in general to be tolerably free from objections. The details, too, would be simple and effectual, without additional machinery. I therefore submit it to your judgment and that of the public. It would be idle to say that I am unconcerned as to its rejection or adoption; but if another and a better mode be suggested, I shall cheerfully prefer it to my own. I have all along felt greatly interested on the subject of the legal

examinations, and I am not likely to abate in feeling now that the goal is almost within reach. I am convinced that the projected alteration will have a most beneficial effect on the fortunes of my profession,—will extend its usefulness, and elevate the station of its members,—and I look forward with certainty to the period when these good fruits will appear. These sentiments will, I hope, plead my excuse for having so frequently trespassed on your columns.

It would be improper and ungrateful to conclude without expressing to the *Examiners* the acknowledgements which all persons interested must feel to be due to them, for the happy and speedy termination of the matter. Had they resisted its progress, it would, doubtless, have been yet long delayed; but having taken the trouble to consider the subject, and having become assured of its utility, they have determined on its introduction, though its first effect is to add another to the heap of their present difficult and voluntary labours. To those gentlemen, then, we beg to tender our hearty and sincere thanks.

It now only remains to congratulate my fellow-labourers on the prospect of so early an attainment of our mutual desires—to entreat all *opponents* of the measure henceforth to join with us in making its operation as efficacious as is practicable, and carefully to investigate its workings and results—and to thank you, Sir, for the readiness and kindness (often hardly tried) in giving insertion to the many letters on the subject, and affording us so many valuable hints of your own. Whenever the change is made, and its good effects are seen and felt, you will, above all our periodicals, be entitled to exclaim, "*Quorum pars magna fui.*"

A COUNTRY SUBSCRIBER.

Sir,

Several correspondents have lately addressed you on the subject of giving prizes to candidates who distinguish themselves at the legal examinations. It appears to me that gentlemen who require a further stimulus for exertion than that which their own interests and future prospects hold out to them, will require some stronger stimulus to induce them to exert themselves on behalf of those who employ them than that which either their client's interest, a scanty fee, or even their own credit can afford; for surely a man who will not exert his energies on his own account is not very likely to do so for anybody else.

Our profession has the credit of considerable rapacity amongst those without its pale; and certainly, if I were in the situation of a client I should feel some little apprehension in placing my affairs in the hands of one who exhibits such early symptoms of this reputed professional disease.

A SOLICITOR.

THE STUDENT'S CORNER.

DOWER ON EQUITY OF REDEMPTION.

I agree with your correspondent W. H. (page 233) that A.'s wife, under the circumstances mentioned by him, has no title to dower; but I do not understand how the point arises (as is stated by W. H.) under the 2d sec. of the Dower Act, 3 & 4 W. 4, c. 105.

Your correspondent does not say whether A. and his wife were married before or after the time when the Dower Act came into operation (1st January, 1834.) If they were married *after* that period, the 2d section of the Dower Act could not apply: because, by the 4th section of that act, a widow is only entitled to dower out of lands which were the property of her husband at the time of his death, and the sale and conveyance by him and his mortgagee in his lifetime would of course defeat her claim. I assume therefore that they were married *before* 1st January, 1834; but in this case the wife's claim to dower would depend upon the *old law*, and not upon the Dower Act at all, and by the old law she could not be endowed of an equity of redemption on a mortgage in fee, and her husband never having been seised during coverture of the whole legal fee, her right of dower never attached upon the estate in question. If, instead of selling the estate, the husband had paid off the mortgage and taken a reconveyance to himself in fee, the wife's claim to dower would have been let in, but this might have been easily prevented by his taking a reconveyance to the usual uses to bar dower. F.

W. H. (p. 233, *ante*), does not say, whether the mortgagor was married before or since 1st January 1834, but in either case, the answer would, as I conceive, be the same. For, if the marriage was before the period alluded to, the Dower Act (see last sect.) does not apply, and the wife was not before that act dowable out of trust estates. If, on the other hand, the marriage was subsequent, it is unnecessary for the wife to join with her husband in aliening. (sect. 4.)

It appears hardly necessary to refer W. H. to the chapter in Watkins on Conveyancing, relating to "Equity of Redemption," to shew that the mortgagor's estate, (the fee being well vested in the mortgagee,) is an "equitable estate." N.

PRIVILEGE FROM ARREST.

I shall be much obliged to any correspondent who will furnish me with answers to the following questions, which, after referring to several practical books of authority, and also to the cases bearing upon the points in question, I have not been able to satisfy myself respecting.

1. Is a barrister privileged from arrest whilst returning from attending a case of summary conviction at a Court of Petty Sessions? and if

he is so privileged, have the magistrates who attended the sessions, the power of discharging him out of the custody of the sheriff's officer who arrests him or must he apply for his discharge to a Judge of one of the Superior Courts?

2. Supposing a barrister to have been attending the petty sessions, but not to have been retained or employed in any matter—coming before the Bench, is he in that case privileged whilst going to and returning from the Court? and

3. Supposing him to have been retained in a case, but not to have acted as advocate, or taken any part in the hearing, is he privileged?

INQUISITOR.

VESTED LEGACY.—SURVIVORSHIP.

A party bequeaths 8000*l.* to a woman separately from her husband; and at her death, to be divided among three of her brothers, who were younger than herself—nothing being said in the will about any of them not surviving this sister. One of the brothers died about seven years ago, before the sister, *without issue*. Had he any power to leave the third part of the property, which would have been his had he lived, to one of the surviving brothers exclusively? or does his share become equally divisible among the remaining two?

M. W.

WIFE'S EQUITY OF REDEMPTION.

A., a married woman, had a bequest made to her by her father's will, of some long leasehold property, to "her separate use, notwithstanding coverture;" and, after coming into possession of the same, she joined with her husband in a mortgage of the property, but without any intention of conveying away her ultimate interest, or of making the property her husband's, by waiving or conveying her separate use in his favour. The husband afterwards became bankrupt, and the mortgage security passed to other hands. The wife survived the husband by about five years, and is lately dead; leaving several children. The mortgagee, and the different assignees under him, have been in possession for many years, and the mortgage debt and interest has been overpaid for many years, (it is supposed about nine)—and the question is, did the equity of redemption continue still in the wife, and survive to her after her husband's death? as if so, the same would now be in her children as her legal personal representatives, and consequently, some one must administer to the wife's estate before calling upon the party in possession for an account, or filing a bill to redeem?

ACTIONS BY UNCERTIFICATED BANKRUPT.

It is, I believe, decided by *Chippendale v. Tomlinson*, Cook's Bank. Law, 5th ed. p. 446; *Silk v. Osborn*, 1 Esp. 140; *Webb v. Fox*, 7 T. R. 391; *Fowler v. Down*, 1 B. & P. 44; *Evans*

v. Brown, 1 Esp. 170; *Drayton v. Dale*, 2 B. & C. 293, and some other cases, that an uncertificated bankrupt may sue for the value of his personal labour, performed since the issuing of the fiat, or with relation to his after-acquired property, provided that his assignees do not interfere. In *Young v. Riskworth*, 8 Ad. & Ell. 470; 3 Nev. & Per. 585, it was held that a bankrupt who had obtained his certificate under a second fiat, but has not paid fifteen shillings in the pound, cannot sue for an after-accurring debt, *though the assignees do not interfere*. Has this decision the effect of overruling the former cases above referred to, or is it to be considered as grounded on any distinction between the cases of an uncertificated bankrupt, and a certificated bankrupt under a second fiat, who has not paid fifteen shillings in the pound?

The two cases appear to be strictly analogous. In both the future effects are vested in the assignees; in the former case, by 1 & 2 W. 4, c. 56, s. 25; and in the latter, by 9 G. 4, c. 16, s. 127. It may be observed, that in *Kitchen v. Bartsch*, 7 East, 62, Lord Ellenborough, speaking of *Chippendale v. Tomlinson*, and the subsequent cases decided on its authority, said that the hardship of the case might have warped the opinion of the judges, when the evil might have been better remedied by statute, but then there was an inveterate practice of twenty years in support of that series of cases. A. C.

SELECTIONS FROM CORRESPONDENCE.

EVIDENCE IN CIVIL CASES.

I am induced to call the attention of the profession to the present state of the law of evidence in civil cases. During my short experience even, I have been frequently obliged to advise a plaintiff to forego all his proceedings against his debtor, by reason of his being unable to adduce such evidence as is now required to prove the delivery of the goods or payment of the money, the only parties privy to the transaction being the plaintiff and defendant; the inconvenience is a very serious one with small tradesmen, who attend entirely to their own affairs; with parties in an extensive way of business, the deficiency is supplied by clerks and servants, who are able to give the evidence required.

What I should wish is, that the plaintiff and defendant should be examined, upon previously satisfying the Court by affidavit that other evidence cannot be adduced—that the books of account of both parties should be given in evidence,—the jury might discriminate between the parties. The principle is already recognised in our courts of request, and with great benefit in my opinion.

I am now called upon to recover a debt of 5*l.* 13*s.* 1*d.* against a doubtful defendant, the costs of obtaining a verdict even in the Sheriff's

Court, would not be much less than 15*l.*, and should the defendant turn out not to be worth powder and shot, my client would incur a loss of 15*l.*, in addition to his debt of 5*l.* 13*s.* 1*d.* Now I do consider some remedy should be provided for the recovery of debts not exceeding 20*l.*, without the present tedious and expensive parade of an action at law, embracing an alteration of the law of evidence such as I have suggested above.

A CONSTANT READER.

CHEAP EDITION OF THE STATUTES.

Allow me to suggest to some respectable law booksellers, if it is not possible to their advantage to publish the statutes from the beginning of George the Fourth to the first of William, down to the cheap edition of the statutes now in being; and I would suggest, in the first instance, the amount necessary thereto should be ascertained and submitted to the profession, to see how many would be required, and thus to cover the expence: as there has been so much alteration in the law during that time, the work would be a great acquisition to the libraries of both barristers and solicitors.

A

LOCAL AND PERSONAL ACTS,
DECLARED PUBLIC,
AND TO BE JUDICIALLY NOTICED.

[Continued from p. 397.]

3 & 4 Vict.

- CAP. 45.—An act for paving, cleansing, watching and otherwise improving, the town of Workington, in the county of Cumberland.
- CAP. 46.—An act to alter and divert a portion of the line of the South-eastern Railway in the county of Kent.
- CAP. 47.—An act to amend and enlarge the powers and provisions of the acts relating to the Bristol and Exeter Railway.
- CAP. 48.—An act to amend the act relating to the Newcastle-upon-Tyne and North Shields Railway, and to raise a further sum of money for the purposes of the said undertaking.
- CAP. 49.—An act for incorporating the Chester and Crewe Railway with the Grand Junction Railway, and for extending to the said first mentioned railway the provisions of the several acts of parliament relating to the said last-mentioned railway; and for other purposes.
- CAP. 50.—An act to revive the powers given to the Thames Tunnel Company for the purchase of certain houses, lands, and premises, in the parish of Saint John of Wapping.
- CAP. 51.—An act to make a further alteration in the line of the Birmingham and Derby Junction Railway, and an approach thereto at Tamworth, and to amend the acts relating to the said railway.
- CAP. 52.—An act to enable the Northern and

Eastern Railway Company to abandon a portion of the line originally authorized to be made; and to alter and amend several of the powers and provisions of the acts relating to the said railway.

- CAP. 53.—An act to amend and continue the act relating to the Glasgow, Paisley, Kilmarnock, and Ayr Railway, and to make a new branch therefrom.
- CAP. 54.—An act for amending and enlarging the powers of an act for establishing a floating bridge or bridges over the Harbour of Portsmouth, in the county of Southampton.
- CAP. 55.—An act for improving the Darford and Crayford Creeks, in the county of Kent, and for making a diversion in the line of the said Dartford Creek, and other works connected therewith.
- CAP. 56.—An act to authorize the Company of Proprietors of the Birmingham Canal Navigations to extend and alter the line of their intended cut or canal from Dank's Branch to Salford Bridge; and to grant further powers to the said company.
- CAP. 57.—An act for making and maintaining a navigable cut or canal connecting the Warwick and Birmingham Canal with the Birmingham Canal, commencing by a junction with the Warwick and Birmingham Canal, in the hamlet of Bordesley, in the parish of Ashton-juxta-Birmingham, in the county of Warwick, and terminating by a junction with the Birmingham Canal, near Salford Bridge, in the same parish.
- CAP. 58.—An act to amend the acts for supplying with water the city and county of the city of Exeter and places adjacent thereto.
- CAP. 59.—An act for granting certain powers to the Faversham Oyster Fishery Company.
- CAP. 60.—An act to amend, alter, and enlarge the powers and provisions of an act of his late Majesty for paving, cleansing, lighting, watching, and improving the town and parishes of Gravesend and Milton, in the county of Kent, and for removing and preventing nuisances and annoyances therein; and to make further improvements in the said town and parishes.
- CAP. 61.—An act to enable the mayor, aldermen and citizens of the city of York, to widen, alter, and improve certain streets or thoroughfares called Spurriergate and Coney Street, in the said city.
- CAP. 62.—An act for establishing and maintaining a proper and effective watch on the river Wear, in the port or haven of Sunderland, near the sea, in the county of Durham.
- CAP. 63.—An act for regulating and maintaining the markets and market place in the township of Tunstall, in the parish of Wolstanton, in the county of Stafford.
- CAP. 64.—An act for making a turnpike road from Greenhill Moor to Eckington, in the county of Derby.
- CAP. 65.—An act for making and maintaining several roads leading from the town of Maiden Newton, in the county of Dorset, and other roads communicating therewith, in the counties of Somerset and Dorset.

- CAP. 66.—An act for further and more effectually repairing and maintaining several turnpike roads in the county of Roxburgh.
- CAP. 67.—An act for further and more effectually repairing and maintaining certain turnpike roads in the county of Elgin.
- CAP. 68.—An act for the more easy and speedy recovery of Small Debts within the town of Tavistock and other places in the counties of Devon and Cornwall.
- CAP. 69.—An act for the more easy recovery of small debts within the parishes of Kingsnorton and Northfield, in the county of Worcester.
- CAP. 70.—An act to enable the Duffryn Llynvi and Porth Cawl Railway Company to raise a further sum of money, and to amend the act relating to the said railway and to the bay of Porth Cawl, in the county of Glamorgan.
- CAP. 71.—An act to enable the Port Talbot Company to raise further monies, and to amend the acts relating to the same port.
- CAP. 72.—An act to amend an act of the fifty-seventh year of King George the Third intitled an act for fixing the dues, duties, and payments for all goods, wares, and merchandize landed on or shipped from the pier or quay of the town of Penzance in the county of Cornwall, and on all ships and vessels resorting to the said pier or quay, or to the harbour of Penzance; and for making and maintaining an additional pier and dock within the said harbour.
- CAP. 73.—An act for improving, enlarging, and maintaining the harbour of Fisherrow in the county of Edinburgh.
- CAP. 74.—An act for equalizing, defining, and regulating the petty customs, and for facilitating the collection thereof, and of the quay dues payable to the mayor, aldermen, and burgesses of the city and borough of Exeter, and for preserving the navigation of the river Exe.
- CAP. 75.—An act for regulating the markets and for erecting a market house in the town of Launceston, in the county of Cornwall.
- CAP. 76.—An act for better lighting and cleaning the town of Kingston-upon Hull, and certain parts of the liberty of Trippert within and part of the municipal borough of Kingston-upon-Hull.
- CAP. 77.—An act for regulating the buildings and party walls within the city and county of Bristol, and for widening and improving several streets within the same.
- CAP. 78.—An act for supplying with water the town and county of the town of Newcastle-upon-Tyne and the borough of Gateshead, and the places adjacent thereto, in the counties of Northumberland and Durham.
- CAP. 79.—An act for better supplying with water the town and borough of Belfast.
- CAP. 80.—An act for repairing and maintaining the road from Tadcaster to Halton Dial, and for making and maintaining a new road from Seacroft to and into the highway leading from Scholes to Barwick-in-Elmet, all in the West Riding of the County of York.
- CAP. 81.—An act to amend the provisions of the acts relating to turnpike roads, leading to and from the City of Exeter, and for making a new branch road to communicate therewith.
- CAP. 82.—An act for more effectually making, repairing, and maintaining certain turnpike roads in the counties of Nairn and Inverness.
- CAP. 83.—An act for making certain roads and branches connected with the new bridge now erecting over the river Dove, near the village of Roceator turnpike, with proper deviations, works and conveniences, and new pieces of road connected therewith, and approaches thereto, in the counties of Derby and Stafford.
- CAP. 84.—An act for repairing the road from the Maidstone turnpike gate on the Loose road in the parish of Maidstone, in the county of Kent, to Newcastle, in the parish of Biddenden, and a branch road to the Thorn, in the parish of Smarden, in the same county.
- CAP. 85.—An act for establishing a general cemetery in the parish of Holy Cross and Saint Giles's in or near the town of Shrewsbury, in the county of Salop.
- CAP. 86.—An act for the establishment and government of the institution called the Royal Naval School.
- CAP. 87.—An act to authorize the appointment of additional coroners for the county palatine of Chester.
- CAP. 88.—An act to amend the several acts relating to the Belfast charitable society.
- CAP. 89.—An act to enable the council of the borough of Liverpool to raise money upon bonds.
- CAP. 90.—An act for the more effectual drainage of certain lands called Billingham Fen, Billingham Dales, and Walcot Fen, Walcot Dales, and North Kyme, East Fen and Ings, in the parish or places of Billingham, Walcot, Dogdike, Hart's Grounds, Coningsby, Swineshead, North Kyme, and South Kyme, in the county of Lincoln.
- CAP. 91.—An act to amend an act for enlarging the present or providing a new workhouse for the use of the parish of Stroud, in the county of Kent; for better governing, maintaining, and employing the poor of the said parish; and also for repairing or rebuilding the church and tower of the same parish, and for other purposes relating thereto.
- CAP. 92.—An act for supplying the town of Ayr, and suburbs, of Newton and Wallace-town, and places adjacent, in the county of Ayr, with water.
- CAP. 93.—An act for explaining, altering, and amending the mode of assessment for the maintenance of the poor within the city of Glasgow.
- CAP. 94.—An act for enabling the Marine Insurance Company, to sue and be sued in the name of the chairman or deputy chairman, for the time being, of the said company.
- CAP. 95.—An act to enable the Farmer's and

General Fire and Life Insurance and Loan and Annuity Company, to sue and be sued in the name of the manager, chairman, or any one of the directors, or the secretary of the said company.

CAP. 96.—An act for granting certain powers to the British Iron Company.

CAP. 97.—An act for establishing and regulating a company, to be called the Edinburgh Silk Yarn Company, and to enable the said company to purchase certain letters patent.

CAP. 98.—An act for forming a company to be called Kollmann's Railway Locomotive and Carriage Improvement Company, and for enabling the said company to purchase certain letters patent.

CAP. 99.—An act to incorporate the trustees and others, directors of the Crichton Royal Institution for Lunatics, at Dumfries, and for the better enabling them to carry on their charitable designs.

[To be concluded next week.]

SUPERIOR COURTS.

Queen's Bench.

[Before the Four Judges.]

EJECTMENT.—OVERSEERS.—DISABILITY.—EVIDENCE.

The 4 & 5 W. 4, c. 76, and the 5 & 6 W. 4, c. 69, have not devested the legal estate in workhouses out of the overseers, so as to disable them from being plaintiffs in an ejectment to recover property belonging to their parish.

Where a rated inhabitant, called as a witness in a matter relating to parish property, described himself as liable to the costs of the suit, but afterwards explained his meaning, by saying that he was so because he was liable to pay his share of the rates out of which the costs must be paid, he was held not to be rendered inadmissible as a witness by such declaration.

This was an action of ejectment on the demise of certain overseers and churchwardens of the parish of Bngbold, in the county of Northampton. The cause was tried before Mr. Justice Bosanquet, at the Spring Assizes for Northampton, in 1839, when it appeared that there had been a small piece of ground, which had been occupied as a garden, and attached to the workhouse, and the defendant, as the master of the workhouse, was let into possession of this piece of garden ground. The defendant now held possession of this, notwithstanding a notice from the overseer of the parish, in whose name the demise in the declaration was laid. The first witness presented on the part of the plaintiff was a rated inhabitant, who on the *voir dire* stated that he was liable to part of the expenses of this

action, and that he had said so in conversation, but he afterwards explained that statement, by saying that he meant that he was, as a rated inhabitant, liable to pay his share of the costs of the action, which would be taken out of the rates of the parish. He was objected to as a witness, on the score of interest, but was admitted by the learned Judge. It was then objected that under the Poor Law Amendment Act and those subsequent acts which had been passed to amend and explain it, the interest of the churchwardens and overseers in the parish land became vested in the guardians when the parish was incorporated into a union. By the 59 Geo. 3, c. 12, "all buildings, land, and hereditaments which shall be purchased, hired, or taken, or by lease of the churchwardens and overseers of the poor of any parish by the authority and for any purposes of this act, shall be demised and assured to the churchwardens and overseers of the poor of every such parish respectively and their successors, in trust for the parish;" and the churchwardens and overseers were made a corporation for such purpose. The legal estate was therefore admitted to have been formerly in the churchwardens and overseers. But the 21st section of the 4 & 5 W. 4, c. 76, reciting the above act, gives all its "powers and authorities, general as well as local, for or relating to the building, altering, or enlarging of poorhouses, and to the acquiring, purchasing, hiring, holding, selling, exchanging and disposing thereof, or of land whereon the same may have been or may be erected," to the guardians of the union, subject to the control of the commissioners; and it was therefore contended that the legal estate was now in the board of guardians of the union. The 5 & 6 W. 4, c. 69, s. 3, was referred to in support of that argument. By that statute it is enacted that "the guardians of any parish or union, or the overseers of any parish not under the management of a board of guardians, or the guardians or trustees of a dissolved union, &c. may still exchange, let, or dispose of any workhouses, tenements, buildings, land, effects, or other property belonging to any such parish or union, and to convey and transfer the same, &c." A verdict was taken for the plaintiff, and a rule was afterwards obtained to set it aside.

Mr. Serjt. Adams and Mr. Humphrey shewed cause.—The demise here is rightly laid to have been by the overseer. The legal estate was vested in him by act of parliament, and had not by the words of the Poor Law Amendment Act been taken from him and transferred to any other person. The Court will not unsettle the legal estate except on express words in a statute. As to the evidence of the rated inhabitant, his accidental expression that he considered himself liable to the costs, is fully explained by the statement that he meant that, as a rated inhabitant, he must pay the rates out of which the costs were to be disbursed. This does not constitute an interest which disqualifies him. [There were other points made in this case, but these alone were decided.]

Mr. M. D. Hill, Mr. Waddington, and

Mr. Hayes in support of the rule.—The demise here was wrong. It is only of late years that the legal estate in the workhouse has been in the churchwardens and overseers. But the lessors of the plaintiff cannot take advantage of the statute that vested the legal estate in such persons, for a more recent statute has now vested it in the guardians under the orders of the Poor Law Commissioners. What are the powers stated in that act? They are those of building, altering, acquiring, purchasing, and holding, and all these powers are taken from the churchwardens and given to the guardians. These powers could not be exercised if the guardians did not possess the legal estate. The act of conferring on them such powers necessarily draws with it the possession of the rights in virtue of which alone those powers could be exercised. To give a different construction to the act would be to defeat its plain intention. All the things which were in the possession of the old officers are now in the possession of the new guardians. The first declaration of the witness was sufficient to shew that he believed himself to have a money interest in the event of the suit, and his testimony ought therefore to have been rejected.

Lord Denman, C. J.—A great many points have been made in this case. The first is an attempt to disqualify a witness by a relation which he gave of a conversation as to his liability to the costs. I am of opinion that it does not appear that he entered into any agreement for the payment of the expenses. Those who wish to disqualify a witness on such a ground, must distinctly bring it home to him that he has incurred a personal liability. *Hendebruch v. Langton** goes that length; but in that respect the present case seems to me to fail entirely. With respect to the effect of the late act of parliament, I should state generally, that although the words are so large as hardly to be consistent with the idea of the overseers still continuing to be legally seized of the property of the parish, yet there are no words which have directly divested them of that property. Expressions, however strongly they may lead us to such an inference, if they do not actually declare that the property is divested, cannot have such an effect given them by mere interpretation, when the vesting of the property has, as in this case, taken place under the authority of a previous act of parliament.

Mr. Justice Patteson.—This seems to me a different case from that of a number of parishioners agreeing together to bear a share in the expenses of a law suit. That would be incurring a personal liability; but here the statement amounts to nothing more than this, that the witness, knowing that an action was brought, believed that he should have to pay his share of the expenses by rates levied on the parish, and which he must pay in virtue of the lands he held in the parish. So that it comes at last to his interest as a rated inhabitant.

That alone will not disqualify him from being a witness. With respect to the transfer of the legal estate, I do not see the least doubt upon the matter; for admitting that the whole scope of the Poor Law Amendment Act to be what is said, there being no express provisions in it to transfer the legal estate from the overseers, such an effect cannot be given to it by implication. Besides, is it credible that when the legislature came to pass another act of parliament which gives still larger powers to the officers then recently created, it should have omitted to declare that the legal estate was transferred to these new officers? It is impossible to conceive such a thing,—especially when we look to the 3d section, where there is a direct power given to the guardians of a union, and to the overseers of a parish not under the management of guardians, to sell and dispose of lands vested in other persons,—a provision which recognises the fact that the legal estate in lands may exist in a third person, and yet that, for parish purposes, such estate may be sold by the guardians. I think that the act does not change the settlement of the legal estate, but merely gives a power to sell; and consequently, that the demise in this declaration was properly laid.

Mr. Justice Williams concurred.

Rule discharged.—*Doe d. Norton v. Webster*, T. T. 1840. Q. B. F. J.

THE EDITOR'S LETTER BOX.

IF "A Constant Reader" has given due notice of his intention to apply for examination and admission in Michalmas Term, and on attending the examination should obtain the usual certificate of fitness, he must apply for admission the same term or give fresh notices. The certificate will entitle the candidate to be admitted in Hilary Term, if he has given notice for that term: otherwise he must give notice for Easter, and apply for a Judge's order to enlarge the time.

The only works with which we are acquainted, likely to prove of service to "A Barrister," as to the information he wishes, are Howard's Colonial Laws, and Burge on Colonial Law. The names of the Judges and Law Officers of the Crown of the West India Islands, are given in the *Legal Almanac*, published annually for the proprietors of this work.

The letters on the Loan Society's Act, and the Sale of a next Presentation, shall be attended to.

We shall continue the Notes on the Statutes of the last Session as early as possible.

The further improvements suggested in the *Legal Almanac* shall be adopted if practicable.

The letters of "A Student;" G.; and "A Subscriber," have been received.

* Moo. & Malk. 402, n.

The Legal Observer.

MONTHLY RECORD FOR SEPTEMBER, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE FIFTH REPORT OF THE CRIMINAL LAW COMMISSIONERS.

THIS Report contains a Digest of the Law of England relating to the following subjects:—

1st. Burglary. 2d. Offences against the Executive Power, including, under the branch which relates to the Administration of Justice, the offences of Bribery, Perjury, Subornation of Perjury, Embracery, Barretery, Maintenance, and Champerty. 3d. Forgery. 4th. Offences against the Public Peace, including Riots, Unlawful Assemblies, Affrays, and Forcible Entries.

Each part of the Digest is preceded by “Prefatory Remarks” of the Commissioners, and from these we shall make some extracts. We need scarcely say that these Digests and Treatises of the learned Commissioners are of the utmost value to the professional reader. It is enough to state that the Commissioners are Mr. Starkie, Mr. Bellenden Ker, Mr. Wightman, and Mr. Jardine. For the present we select the subject of

BURGLARY.

“The characteristic of this offence is the invasion by force or fraud of a man’s habitation by night,—one of the two other circumstances, *viz.*, either the purpose of the offender, or the act which he afterwards commits, being essential to the completion of the crime. The breaking into the dwelling-house in the night-time, an injury usually accompanied with terror to the inmates, is one of such variety in point of circumstance and degree, as to require dis-

tinction from a bare but aggravated trespass, in order to subject the offender generally to that severity of punishment which, in numerous instances, such an offence demands. A distinction of this kind is naturally supplied by a consideration of the offender’s motive and intention. Accordingly we find that, by the ancient common law of England, this distinction was made, and that a breaking into a mansion or dwelling-house by night has, from the earliest times, been deemed to be a capital offence, when such breaking has been perpetrated with the intent to commit a felony, or when the breaking has been followed by the actual commission of a felony within the dwelling-house,—a fact which was probably considered to be conclusive as to intention.

“Burglary, as it was understood in remote times, was different in some material respects from the crime as it exists at the present day. Formerly a breaking attended with force and violence, and accompanied by an actual entry of the person of the offender within the dwelling-house, was probably deemed to be essential to the offence. In later times it was found necessary to punish with severity not only such invasions of the mansion as were effected by actual violence, but also such as were effected by stratagem or fraud, or by means of intimidation, or where the felonious purpose was accomplished by means of a hook or instrument, without any actual entry made by the offender in person. And where force was used, the slightest degree of force was held to be sufficient, such as the raising a window-sash, or lifting up an unfastened trap-door. Such a conclusion naturally resulted from the difficulty of fixing the minimum of violence which should be essential to the offence, and the expediency of extending the law to offenders whose guilt was great, although the force used for obtaining entrance might be inconsiderable.

“Thus, the offence consists of three elements: 1st. an invasion of the dwelling-house, effected by force or fraud; 2dly. in the night-time; 3dly. accompanied with the actual com-

mission of a felony, or made with intent to commit a felony. The crime, thus limited, embraces a very wide scope, comprehending offenders whose offences in point of atrocity bear no real resemblance to each other, but who were formerly without discrimination liable to capital punishment. The legislature has lately thought fit to alter the law in this respect, and to define those aggravations of the offence which should constitute a crime still to be visited with capital punishment. It remains to us to point out some peculiarities in the existing law which seems to require consideration.

"It seems in the first place to be doubtful whether the using a house for the mere purpose of lodging there at night, without living there in the day-time, is sufficient to constitute a dwelling-house.^a A house so used appears to be fully within the mischief contemplated by the law. The offence is one which can be committed in the night-time only, and to which therefore the mode of occupation during the day is not really essential; and it is somewhat singular that the question, whether a man is to be protected in his house during the night should depend on the question, how his house may be occupied during the day. In some of the cases in which this point has been discussed,^b the house was slept in, not by the

owner, but by a person employed by him for a particular purpose, *vis.* for the protection of the goods; and it was held that, as neither the owner nor any of his family had slept there, the house could not be regarded as such a dwelling-house as could be made the subject of burglary. We do not conceive that these decisions are supported by just principles. It appears to us that every one who inhabits, lodges in, or uses a house as his dwelling in the night-time is entitled to the protection of the law, and that he is equally so entitled, although his object in being there may be solely to protect the property; and further, that such protection ought equally to be afforded, whether the owner or occupier himself lodge there or employ an agent or servant to do so for the same purpose. The fundamental principle of the law is, the protection of the dwelling-house; the proper and obvious tests for deciding whether a building be or be not a dwelling-house must consist in its having *been actually used* as such, and in the continuing intention *still* to use it as such. Upon the question, what kind of *use* ought to give the character of a dwelling-house to a building, we conceive the proper answer to be, as regards the crime of burglary, the protection of its inmates from violence during the season of natural repose.

"Another question of considerable difficulty is to ascertain and define what buildings shall be considered as constituting a dwelling-house. This is a question, in the law of England, depending *partly* on mere division by walls and other like partitions, and *partly* on the mode of occupation, where there are several occupants of the same building. Upon both these points, and more especially the latter, a considerable conflict of authorities has existed. The term *dwelling-house* is not confined to the chamber actually slept in, but (subject to the distinctions founded on separate occupations) comprehends all parts of the building which communicates internally. Formerly the law was much more general; and all buildings which were under the same roof, or within the same outfence or curtilage, and occupied together, were considered to constitute parcels of the

^a See *Davis's case*; *Jones's case*; *East's P. C.* 499.

^b In several cases it has been questioned whether a house can be deemed to be the dwelling house of a person who had not inhabited the house by himself, or part of his family. (1 Hawk. P. C. c. 38, s. 11; 1 Hale's P. C. 556; *East's P. C.* 496. In *Davis's case*, *East's P. C.* 499, the prosecutor having taken possession of a house on a tenant leaving it, and having purchased the furniture, placed a servant in it, who slept there for three weeks, in order to take care of the furniture, the prosecutor not intending to reside or carry on business there, it was held that this was not the dwelling-house of the prosecutor, as he never intended to inhabit the house. In *Thomson's case*, *East's P. C.* 498, the house which was a new one, being the property of Mr. Holland, had been finished all but the painting and glazing, and a workman slept there by the authority of Mr. Holland, for the purpose of protection, but no part of Mr. Holland's family had taken possession of it, and it was ruled not to be the dwelling-house of Mr. Holland. This is said to have been determined on the authority of *Lyon's case*, *East's P. C.* 497; but it appears that in *Lyon's case*, the house was *uninhabited* at the time of the offence. That case therefore was no authority for the decision in *Thomson's case*. In *Harris's case*, *East's P. C.* 498, the prosecutor having taken an house, procured two hairdressers to sleep there to take care of the goods and merchandise, but had not slept there, nor had any of his family, and it was held that the prisoners could not be found guilty of burglary. In the case of *Jones* and

Longman, *East's P. C.* 499, *A.* having died in his house, *B.*, his executor, put servants into it, who lodged in it, and were at board wages, but *B.* never lodged there himself, and the court inclined to think that the house might be called the mansion-house of *B.*, because the servants lived there. This opinion seems to be in opposition to the case of *Davis*, which is much more recent. It cannot, however, be doubted that to make the question of dwelling-house or no dwelling-house to depend upon the particular duties to be performed by a party sleeping in a house would be inconvenient, and that to deny protection because the agent employed was not a domestic servant, or because he was placed there to discharge a particular duty would be unreasonable, and we have therefore ventured to suggest a more certain rule.

dwelling-house, although not connected by any internal means of communication; and so also were out-houses adjoining to a dwelling-house, if they were occupied as parcel thereof, although there was no internal communication.^d The generality of this doctrine occasioned frequent difficulties.

The rule on this subject was made much more simple and certain by the statute 7 & 8 of King Geo. IV. c. 29, s. 13, which excluded all buildings from being regarded as parcel of the dwelling-house, although occupied therewith, unless there was a communication between such buildings and the dwelling-house, either immediate or by a covered and inclosed way. By the joint operation of this statute and the rules of common law, every dwelling-house, constituted such by any part being inhabited, comprehended all parts internally connected either by any immediate communication or by means of covered and inclosed passages. But parts of the same building, whether originally or subsequently separated by any wall or partition cutting off communication between those parts and such as are inhabited, formed no part of the dwelling-house, although the ownership or occupation might be the same. In conformity with this state of the law, the 17th article of the Digest has been framed. So far, then, as the term dwelling-house depends on the purpose for which some part must be used, and as regards the utmost limit to which every such dwelling-house may extend, the definition is complete.

"The law, however, makes other distinctions for the purpose of determining *whose* dwelling-house is burglariously invaded. These distinctions exist where a building, or portion of a building, all the parts of which are internally connected, is occupied by several persons inhabiting separate parts. Upon this subject we conceive that we have framed the 20th article of the Digest, in conformity with the existing law. The authorities, however, to be found in the books, are numerous and conflicting, and do not expressly warrant a rule so general as that we have proposed, although it seems to be sanctioned by the principles on which the decisions most to be relied on are founded.

"According to the 1st branch of the 3rd rule contained in article 20, although several persons shall inhabit several (but connected) parts of a house, there being a common entrance in the occupation of some inhabitant, it shall be deemed to be the dwelling-house of such inhabitant. This is a position which may, we think, be extracted from the existing law. For it is clear that if the owner let off parts of his dwelling-house, but continue to inhabit part, the whole is still *his* dwelling-house, although if he inhabit elsewhere, it ceases to be

his dwelling-house, and then the rooms or sets of rooms so let can only be regarded as the separate dwelling-houses of the tenants, and the breaking the outer door of the common entrance would not constitute a burglary. This distinction seems in principle to depend on the consideration that when the owner does so inhabit, the outer door and entrance being in his possession and parcel of the entire building, he is entitled to the protection afforded by it just as much as he was before he let part to a tenant; for it would be more unreasonable that he should be deprived of that protection because it was required for the sake of his tenant, as well as himself; and although the breaking be into a part occupied by a tenant, yet the owner himself is by such breaking as much exposed to danger as if the part inhabited by himself had been broken.

If therefore *A.*, being the owner of a dwelling-house, let parts to *B.* and *C.* on lease, and inhabit part himself, a common outer door and entrance to the three parts still remaining in the possession of *A.*, subject to the right of passage in *B.* and *C.* then, as the law stands, the whole would be the dwelling-house of *A.*, although the parts let to *B.* and *C.* were broken into. Suppose that things being so situated, *A.* should release to *B.* and *C.* the several parts in their occupation, the dwelling-house would it is presumed, be still (as regards burglary) the dwelling-house of *A.*, for, as concerns occupation, the same state of things would remain precisely as before; and to make this question, as regards the crime of burglary, to depend, not on the state of occupation, but on a reversionary right, would be to introduce a novel principle. The question evidently depends on the mode of occupation, not on the extent of the interest of any occupier; a position strongly confirmed by the consideration that were *A.*, without having so released, to cease to inhabit, the dwelling-house would no longer be his, although his right as owner remained just as before. So again, which is to the same point, if *A.* were assignee for a term of the whole dwelling-house, and were then to assign parts to *B.* and *C.* for the remainder of the term, retaining and inhabiting a third portion himself, and retaining also the possession of the outer door and common entrance, subject to the rights of passage granted to *B.* and *C.*, the dwelling-house in such case would still be the dwelling-house of *A.* Suppose further, that *A.*, in either of the two cases above suggested, having no interest except in the part inhabited by himself and the outer door and common entrance, transferred that interest to *D.*, and that *D.* inhabited the part before inhabited by *A.*, it cannot be doubted that the dwelling-house would under the circumstances be the dwelling-house of *D.*, whose occupation as well as legal interest would be precisely the same as *A.*'s was before. Or the position may be thus illustrated. Supposing, as before, that *A.*, being the owner and occupier of a dwelling-house, lets parts severally to *B.* & *C.*, the three occupiers having a common entrance and outer door, of which *A.* still remains pos-

^c East's P. C. 492; 1 Hale's P. C. 558-9; *Gibson's case*, 2 East's P. C. 508; *Garland's case*, 2 East's P. C. 493.

^d *Brown's case*, 2 East's P. C. 493.

^e See *Gibson's case*, 2 East's P. C. 508; *Eggington's case*, *ib.* 494;

essed, the dwelling-house, under the circumstances, would be that of *A.* whilst he inhabited part of the house. If *A.* were to cease to inhabit, the dwelling-house would no longer be his, but in case he caused an agent or servant to sleep in the part he before occupied, the whole would, for the purpose of burglary, again become his dwelling-house, for, in point of law, he would then be an inhabitant just as before. But if *A.* could thus constitute himself such owner for the purpose of protection to his agent, it would be singular that he should not be able to transfer that protection to a tenant or purchaser. If then the conclusion be attainable, that where one inhabits part of such a building or portion of a building, and is also in possession of the entrance and outer door, used by himself and other inhabitants, such building may be considered, for the purpose of burglary, to be the dwelling-house of that person, it follows that the same consequence must obtain without any regard to the particular circumstances from which such a state of things has arisen. The common law doctrine and distinctions on this subject seem to have turned on this single difficulty, *viz.* of considering that to be the outer door of a dwelling-house, which was not in the occupation of an inhabitant; for in such case where there were several inhabitants, the dwelling-house could not be considered to be the dwelling-house of any one rather than any other of such inhabitants of distinct parts; neither could it properly be considered to be the joint dwelling-house of all, there being no joint occupancy. That difficulty is removed where an inhabitant is in possession of a common outer door and entrance. These observations and authorities will, we conceive, justify the first branch of the third rule above referred to.

"The second branch of the third rule, *viz.*, that if such outer door and common entrance be not in the occupation of any one inhabiting part of such building or portion, each inhabited room or set of rooms shall be deemed to be the dwelling-house of the person inhabiting it, depends upon the same principles, and seems to be fully warranted by the authorities. Within this description the ordinary cases fall of chambers, or rooms in the Inns of Court, which open into a common staircase. Although there should be an outer door to such common staircase, the breaking of such outer door would not be burglary, neither the staircase nor outer door being in the possession of any one inhabiting any of such rooms or chambers."

"We now advert to the last branch of the above-mentioned rule, *viz.*, that if there be no common entrance to such building or portion of a building, then each inhabited room or connected set of rooms shall be deemed to be the separate dwelling-house of the person inhabiting the same. This seems to be warranted, as well by analogy to the general prin-

ciples of the common law in respect of burglary as by direct authority. If the owner of a house, the parts of which were connected by internal communication, were to let parts to *A.*, *B.*, and *C.*, each of whom had access to his own by a separate door, there being no common entrance, each part must be considered to be the dwelling-house of each separate inhabitant; for if the part inhabited by *A.* were to be burglariously entered, it could no more be regarded as the dwelling-house of *B.* than it could be considered to be that of *C.*; and unless it were to be deemed the dwelling-house of *A.* alone, it would be uncertain whose dwelling-house it was. And for want of any joint occupancy it could not be considered to be the dwelling-house of the three. And in such a case it makes no difference, although the owner himself occupy a portion, he and each of his lodgers or tenants having a separate outer door. This was expressly ruled by *Holt, C. J.*, at the Old Bailey, in 1701.^s

"The observations which we have thus made, and the authorities to which we have referred, will serve to show the difficulties which have been experienced at common law in determining whose dwelling-house should be said to have been broken, in cases of distinct occupations of connected parts of a building. The knot might have been cut by restricting the definition of a dwelling-house to the terms of Articles 13 and 17, and by permitting all connected parts of the dwelling-house so defined to be described as the dwelling-house of any one of several distinct inhabitant occupiers. The objection to this as a general rule would be, that it would constitute a departure from the present rules of the common law, and would in some instances be too narrow to include that as a burglary which would be within the principle of the definition.

"It may be observed that there is a case which may make it desirable to extend the limits of the law against burglary, *viz.*, where the owner of a dwelling-house, part of which is let to a lodger, breaks into the chamber of the latter in the night-time with a felonious intention. As against a stranger the whole dwelling-house would be the house of the landlord, and if in the case of such an offence against his tenant the whole were still to be considered to be his (the landlord's) dwelling-house, he would not be guilty of burglary by breaking into any part. This particular case may be provided for under the head of Procedure, where a rule may be laid down that in every case of such several occupation the chamber, or set of connected rooms, occupied by the tenant, may be described as his dwelling-house.

"Although in construction of law there are many instances of a breaking unaccompanied by any force whatever, as in the case of an entry by fraud, yet it is singular that many nice distinctions should exist on the question, what shall be sufficient to constitute a break-

^s East's P. C. 492; 1 Hale's P. C. 556; 1 Hawk. P. C. c. 38; Cro. Car. 474.

^s See 2 East's P. C. 506.

ing by force. It has been decided that the entering by a door by means of lifting a latch is a sufficient breaking. On the other hand, it has in several cases been questioned whether the raising of a trap-door, kept in its closed position by the mere force of gravity, was a sufficient breaking. In *Callan's case*,^b a heavy flat door of a cellar, which would keep closed by its own weight, and would require some degree of force to raise it, had been opened. The door had bolts on the inside by which it might have been fastened, but it did not appear that it was so fastened at the time of the imputed offence. The judges were divided in opinion whether the opening of this door was such a breaking of the house as constituted burglary. On the other hand, it was held in *Brown's case*,^c that the opening of a similar trap-door was a sufficient breaking, and the only perceptible distinction between these cases is, that in *Brown's case* there were no interior fastenings at all, whereas in *Callan's case* there were fastenings, though they were not used. In *Russell's case*,^d 1 Moody's Crown Cases, 377, in the discussion of which *Callan's case* and *Brown's case* were considered, an entry was made through a cellar, the entrance to which from the outside was by a flap which let down, and by raising which the prisoner had entered. The flap had been occasionally fastened with nails, but the jury found that on the night in question it had not been nailed down. In this case the judges held that the breaking was sufficient. The result, however, of those cases, and the impression of the profession are that the lifting up of a trap-door, although unfastened, is sufficient. If this be correct, it seems to follow that the mere opening of a door, although neither barred nor latched, would also constitute a breaking. For it is impossible, upon any intelligible principles, to distinguish between the degree of force used to raise a trap-door, and that sufficient to open the ordinary door of a dwelling-house.

"By the statute 12 of Queen Anne, st. 1, c. 7, (repealed by the statute 7 & 8 of King Geo. IV, c. 27, and re-enacted by c. 29 of the same statute,) the crime of burglary was extended to the case of an offender who having committed a felony in a dwelling-house, or having entered therein with intent to commit a felony, afterwards *broke out* of such dwelling-house in the night-time. This extension does not, we think, rest upon any just principle. After a felony has been committed within the dwelling-house, the offence is not in reality aggravated by lifting the latch of a door or the sash of a window in the night-time, in order to enable the offender to escape. A breaking out may indeed be an innocent act, as it may be committed by one desirous of retiring from the further prosecution of a crime; and the extension of the law of burglary to such a case is not warranted by the principles on which the law is founded, inasmuch as a circum-

stance not essential to the guilt of the offender, or the mischief of the act, is made legally essential to the crime. It is ineffectual even with a view to the object proposed; the *pre-text* for conviction fails in the absence of a breaking out, which is a casual and uncertain circumstance.

"Whilst for these reasons we recommend the repeal of the statute 7 & 8 of King Geo. IV, c. 29, as regards this extension of the law of burglary, we think it politic that provision should be made for the punishment of offenders, who cannot be convicted of an aggravated offence merely because no breaking or burglarious entry can be proved. And we have inserted a clause for this purpose.

"In the arrangement of the rules respecting burglary in the Digest, we have adhered to the characteristics of the offence as contained in the existing law; treating the invasion of a dwelling-house in the night time, as the *corpus delicti*, and the circumstances of violence and ill-usage to inmates as aggravations. In conformity also with the present law we have considered house-breaking with its several aggravations as a separate and distinct offence from burglary. If, however, the object had been to re-construct the law upon this subject, instead of merely digesting it with reference to existing rules and definitions, we are aware that a far simpler and more convenient method of arrangement might have been applied. In the French law, and in most of the modern codes of Europe, breaking an inhabited house is treated as an aggravation of theft.^k This is an imperfect means of classification, for as the breaking may be attended with the commission or intention to commit other offences, we see no reason why it should be considered as an aggravation of theft alone. The proper course, as it appears to us, would be to consider breaking a dwelling-house as in all cases the simple offence; and then to classify the circumstances of stealing or committing any other offence therein, by night-time, and of alarm or injury to inmates, as so many aggravations, to each of which, when added to the crime of house-breaking, an appropriate place in the scale of punishments should be assigned. We apprehend that an arrangement of the law upon this principle would obviate many of the most embarrassing difficulties by which the subject it at present attended.

^j In *Smith's case*, Moody's C. C. p. 178, it was held that if the sash of a window be partly open, but not sufficiently so as to admit a person, the raising it so as to admit a person is not a breaking of the house. The prisoner was convicted on the authority of a former case where the same point had occurred. But the judges held that this could not be considered to be a breaking, there being no decided case to that effect.

^k Code Pénal Art. 381. See also the Bavarian Code, Art. 221. Prussian Code, Art. 1163.

^b Russell & Ryan's Crown Cases, 157.

^c 2 East's P. C. 487.

DEBATES IN PARLIAMENT RELATING TO THE LAW.

CHANCERY REFORM.

WE understand that Mr. Pemberton has been induced, at the request, as well of many members of the Bar as of the Incorporated Law Society, to correct the report of his speech on Chancery Reform, delivered on the 5th August, and to authorize its publication. We noticed several prominent parts of the speech in our number of the 15th August. Referring to that article, we deem it useful to place before our readers some further extracts from Mr. Pemberton's observations. The following are upon the general grievance of the *expense* and *delay* of a Chancery Suit.

"Delay, (he observes) indeed, is itself expense, with the addition of a thousand ills besides. But these evils have so commonly been treated as a mere topic of popular declamation—as a convenient ground of attack against a minister—that the real nature and causes of the evils, and the means by which they may be removed or alleviated, have scarcely ever, in this House, been investigated. But however dry or uninteresting the detail may be, there is no other mode of discussing usefully the best remedy for evils, which are felt by all to be of overwhelming magnitude; which all men, of all parties, are equally interested in correcting, and if they understood them, would, I believe be equally anxious to correct.

"Sir, for this purpose it is necessary to distinguish between the delay and expense which arise from the want of sufficient judicial power in the courts, and those evils of the same kind which arise from other causes. The former class, the bill now before the House will leave entirely undiminished; the latter, by means of this measure, may be removed or lightened.

"Sir, it appears from the evidence taken by the House of Lords, that the average arrear of causes in the Court of Chancery is about seven hundred, and that allowing twelve months for bringing a cause into a state for hearing, two years more are wasted before it can be heard. Perhaps most causes are heard twice; many, several times before they are finally disposed of. If any accounts are to be taken, or any inquiries made, the causes are at the first hearing referred to one of the masters of the Court, and after he has made his report, are again set down for hearing before the Judge, and undergo another delay of two years. Though the expense attending this delay is the least of the evils which arise from it, even the expense well deserves attention. It is not merely that during this period, term fees are paid in each of the four terms in each year, to all the clerks in court and solicitors employed, but occasions

for applications by motion and petition are continually arising, and changes are constantly taking place which give rise to new suits. If a birth, or death, or sometimes if a marriage takes place, if a man makes an assignment or a mortgage of property, becomes lunatic, bankrupt, or insolvent, if any change or transmission of interest occurs, a new suit is the consequence. A most respectable and able solicitor, Mr. Field, who has devoted great time and attention to the subject, was examined before the select committee of the House of Lords, and he has also published a pamphlet on the offices and practice of Chancery, which deserves to be studied by all who take an interest in the subject. He has made a calculation of the expense arising from the delay in hearing in the Vice Chancellor's Court alone. The arrear there, at that time, was five hundred and fifteen causes, and he computes it at 20,000*l.* per annum, so that taking the average arrears in the three Courts at seven hundred, nearly 30,000*l.* must be thrown away in each year, in pure loss, without the slightest advantage to any human being; and the suitors to this extent are taxed, not to secure to them any advantage, but to purchase heart-breaking anxiety, distress and ruin; and four or five years of this expense are thus inflicted on the suitors through mere deficiency of judicial power!

"Another of the modes in which this delay operates to defeat justice is in compelling parties to compromise their suits from inability to bring them to a decision. It appears from the evidence of Mr. Field, that out of 1366 *adverse* causes, not much more than 300 are set down to be heard, and less than 200 are actually heard—the rest are compromised or abandoned. It may be thought that a settlement by way of compromise may be no evil, but the contrary, and so it is when the compromise is fair. But observe how the delay affects the terms of compromise—I have a claim for 1000*l.* which can be recovered only in Chancery. The debtor knows that I cannot possibly obtain a decree in less than three years; that he may probably be able to delay the original hearing much longer; that if it depends upon an account to be taken, however simple, he can withhold payment for more than twice that time, and an unascertained balance carries no interest. He knows, therefore, that it is worth my while to take half my just demand, rather than to wait for eight or nine years it may be, and recover the whole amount at the expense of extra costs, which I may have to pay, to an amount perhaps equal to the difference. He offers me therefore, as a fair compromise, in lieu of a present value to which I am entitled, the value of a reversionary interest, and if I am wise I shall accept it. But the delay not only occasions the resistance to just demands, it sometimes prevents the abandonment of claims which are unjust. A man files a bill in which he finds that he must ultimately be defeated, and be charged with the costs of the suit; but he knows that the death of either party may save him from the payment, because

a suit cannot be revived for costs alone, and he therefore protracts the suit by all possible means, and takes the chance of one party or the other dying in the long course of years through which he can extend the litigation.

"So it fares with causes actually instituted; but the greatest evil is the utter exclusion from relief of all parties, whose demands are not of large amount, or who are too poor to bear the expense of such protracted litigation. It is stated in the petition of the solicitors, which I had the honour to present this evening,^a that practically there is no remedy in the Court of Chancery if the sum to be recovered is less than 1000*l.*; that it is better for a smaller sum to submit to the loss rather than to incur the risk and expense of prosecuting the claim. Now let the House observe, to what a vast number of cases a court of equity alone can afford relief. If you have a legacy to recover, a trustee to call to account, a partnership difference to adjust, a mercantile account to investigate,—in all these cases, and a multitude of others, a court of law can give no redress, or no adequate redress; and yet to all but wealthy suitors the doors of a court of equity are closed. For the poor man, in all those cases in England, there is no justice.

"The extent, the enormous extent, of this mischief appears from contrasting on the one hand the number of bills filed in Lord Hardwicke's time, with those filed now; and on the other, the amount of the property under the care of the Court in Lord Hardwicke's time and now. In 1750, the earliest year at which I have the returns, the number of bills filed was 1744; in 1839, it was 1750.^b Now, let it be recollected how prodigious has been the increase in population, in wealth, in commerce, in the complication, variety, and intricacy of transactions, out of which questions upon rights of property arise, during the last century; and still, there has been scarcely any increase in the number of suitors. Yet, so far from the arm of the Lord Chancellor having been shortened during this period, this Court has gone on from year to year accommodating itself to the exigencies of society, and gradually extending its authority till it has absorbed within its jurisdiction nearly all the property in the kingdom. There is no considerable landed estate which is not subject to trusts which courts of equity only can controul. There is no personal estate in the disposition of which, on the death of the owner, difficulties arise, which can be administered except through this medium; and yet the number of bills filed is scarcely increased. How is it possible to account for

this, except on the hypothesis that the enormous expense and delay of the Court exclude all small suitors from justice. The different nature of the causes now and in Lord Hardwicke's time, may be judged of from the amount of the funds standing in the name of the Accountant General at the two periods. In 1750, it was 1,665,160*l.* 18*s.* 4*d.* It is now above forty-one millions. And this is the personal property alone. The real property is perhaps much larger. There is, in this Court, complete justice for the rich—for the poor, there is none at all. Now, I ask, is this a state of things which ought to be permitted to continue for one single hour? Is a government justified in permitting its continuance, merely to escape from a night's debate in the House of Commons? I put the question to those members who think that matters which affect the well-being of the people, ought to be of some account with their representatives, and that the due administration of justice is essential to that well-being. I ask them, whether these things, however inferior in importance to party questions, are not still of some moment, and whether, after devoting six months of eager debate to what interests ourselves, we ought not to allow as many hours to what interests the people? I put the question to those ministers who told us in the King's speech of 1836, that "the speedy and satisfactory administration of justice is the first and most sacred duty of the sovereign." I repeat, that the country has a right to know the true reason why a measure, which was calculated to put an end to such grievances was thrown overboard by the ministers, as it at present appears, in mere indolence or caprice.

"Sir, it has been said, that the appointment of two additional judges would not have remedied all these evils, and unquestionably it would not: but the rejected measure contained also the provisions embodied in this bill, which are probably of still greater importance than the appointment of additional judges, or the alteration in the Court of Exchequer. Yet these, but for the energy of Lord Brougham, would have been equally lost to the country. I will venture, with the permission of the House, to offer some observations on the evils which appear to me to exist in the Court of Chancery, and to be capable of correction without the appointment of additional judges, or any alteration in the Court of Exchequer; in order that the House may judge how far the bill now before us is adequate to remove these evils, or how far it may be necessary for the House to arm the committee with additional power to make it adequate to the purpose."

Mr. Pemberton proceeded to point out that both expense and time might be saved by some alteration in the practice with respect to counsel, which we extracted p. 290, *ante*. He then remarked on the necessity of diminishing the number of references to the master, and rendering it incumbent on the Court to decide

^a See the petition, p. 356, *ante*.

^b It has been suggested to me, that this latter return is of original bills only, which appears to be so, and that Lord Hardwicke's return includes bills of revivor and supplement. I am informed that the number of bills filed in 1839, including bills of revivor and supplement, was 2189. The increase, however, even with this correction, is very trifling.

without such references, and without the present difficulty of having every formal party before it.

"There are cases in which, singular as it may appear, by straining to an excess a principle, which is at the root of all justice, the most serious injustice is actually done. If there be one principle in the administration of law which would seem to require no qualification, it is the rule that no man's interest shall be affected without his being heard. And yet, as this rule is acted upon, it is the most fruitful perhaps of all sources of expense and delay—of needless expense and delay. If a landed estate is to be dealt with in the Court of Chancery, all persons who have an interest in it must be brought into court before it can be touched. Now these persons are often extremely numerous. Take the most familiar case. A gentleman of landed property devises it by his will to trustees—he charges it with the payment of portions to his younger children, and legacies and annuities to his friends and servants, and subject to these encumbrances he gives it in trust for his eldest and other sons in succession, and their issue. There is no question about the sufficiency of the estate to satisfy all the charges a hundred times told, yet if the trusts of this will are to be executed by the Court of Chancery, all these persons, trustees, and *cestui qui trusts*, children, friends, and servants, must all be parties to the suit. But it not improbably happens that the children's portions are also in settlement, and if so, the trustees of their settlements, and the parties interested under them, husbands, wives, and children, must equally be parties. Nor is this all; if during the pendency of the suit any of these innumerable parties die, or children taking an interest are born, additional bills of revivor and supplement are necessary, till at last the record is so incumbered that any effectual progress in the suit becomes almost impracticable. Each party may employ a separate solicitor and counsel, and costs are accumulated to an extent which no moderate estate can bear. Now what is the cause assigned for this most ruinous practice? Why a principle in theory unimpeachable, that the interests of all these parties may be affected by the decision, and therefore they ought all to be heard. It is said that the court cannot tell that the estate is more than sufficient to pay the charges, and that therefore a legatee of 20*l.* must be present at taking all the accounts in the Master's Office, by which the fund subject to his demand, and the amount of the charges upon that fund are to be ascertained, and that if a question arises on the construction of the will, he has the same right to be heard in defence of the fund on which his 20*l.* is charged as the owner of the estate itself subject to the charge, though the estate may be worth 20,000*l.* a-year. Yet it is very obvious that the legatee of 20*l.* might safely trust the defence of the estate to its owner, who cannot protect the 20,000*l.* a-year without protecting at the same time the 20*l.*,

and that the only real consequence of the rule to the favoured legatee is, that his whole 20*l.*, and much more, is absorbed in the extra costs of the suit, which he has to pay. But what makes this rule the more unreasonable, is, that if the estate be held by a legal and not an equitable title (a distinction hardly intelligible to any persons but lawyers), and the question is tried at law, none of these parties can interfere; the title is defended by the party in possession, or asserted by the party claiming the possession, and they, and they alone, can be heard. Nay, in the Court of Chancery, if instead of real estate the property happens to be personalty, a totally different rule prevails. If a personal estate of a man who dies worth a million, is administered, the executors are considered sufficiently to represent the interests of all parties, creditors, legatees, and annuitants, and yet precisely the same argument might be used with respect to the doubt as to the sufficiency of the fund, and the interest of every legatee to see that the accounts of the estate are properly taken in the Master's Office, which, with respect to land, is thought to require the presence of all these different parties. Nay, if the land, instead of being held in fee simple, is held for 1000 years, then it is personal estate, and is sufficiently represented by the executor. Now under wills the same person is most commonly both trustee and executor. Whatever be the amount of the property—however enormous—if it be leasehold, one defendant is sufficient; if there be an acre of freehold a hundred other parties become necessary.

"Surely there is no sense nor convenience in acting upon rules so opposite, in cases substantially the same; and I can see no sufficient reason why the trustee in such cases should not be deemed to represent the real estate, as completely as the executor represents the personalty. In cases where there is no trustee, some other arrangement would be necessary; but in all cases of this description, I have little doubt that a most important reduction may be made in the number of parties, and that the expense and delay of such suits may be diminished to a very small part of its present amount.

"The same principle—the apprehension of affecting the interest of parties in their absence—has introduced another, and perhaps still more crying evil, the endless multiplication of useless references to the Master. The rule upon this subject is unfortunately applied indifferently both to real and personal property. A legacy is given to a class—for instance, to the children of John Thompson—John Thompson and his wife are before the Court, and say we have six children, neither more nor less. The six children are present, and say, Here we are, all brothers and sisters, and we have no other brothers and sisters. The executor or trustee is present, and says I have known the family all my life, there are six children, neither more nor less. A witness, or half-a-dozen witnesses, swear to the same thing—but all in vain. The Judge is incre-

dulous—he says I must have this matter inquired into by the Master; and forthwith the cause is dispatched to Southampton Buildings. Here the point being one about which there is neither doubt nor dispute,—about which all parties are agreed except the Judge—the inquiry occupies a comparatively short time—perhaps not above twelve months—particularly if the parties are fortunate enough to get into the office of my honourable and learned friend opposite, the member for Galway. The Master having looked into the evidence which was before the court, and probably none other, is, of course, satisfied that John Thompson has six children, and no more; and upon his report the court is satisfied also. But the cause is to be set down again in the paper, and must wait its turn, and at the end of another two years, if fortunately no change happens in the interval to John Thompson's family, his six children obtain their rights; having waited three years, and paid the expense of an inquiry and a double hearing, without the slightest advantage to any body.

"This practice of referring matters to the Master without sufficient cause, is carried to a most mischievous extent in a multitude of other cases, and has strong recommendations to a judge, who is more desirous of the credit of dispatching business than scrupulous about the mode in which it is disposed of. A cause is got rid of for the day—it disappears out of the paper—it counts amongst the "causes heard and otherwise disposed of," and swells the return of business done by the court. But it is a most false credit acquired, not by dispatching business, but delaying it—by denying justice, instead of administering it. The rules, however, having been established, no individual judge, however much he may feel the grievance, considers himself at liberty to depart from them.

"Sir, by alterations on these points—by reducing the number of counsel, the number of parties, and the number of references to the Master—I venture to think that most important savings may be made, both of time and of costs, and yet these are but a few of the instances in which the practice of the court, may, in my humble opinion, be usefully reformed. But having trespassed so long on the attention of the House with these details, and having still to trouble them with matters connected with the officers of the court, of still more importance, I dare not dwell longer on a subject so technical as this."^c

"^c Perhaps another rule, more mischievous than those referred to, ought to have been adverted to, viz.:—the rule that the court will not make a mere declaration of right—that it requires accounts to be taken before it will determine a question as to the right to the residue of a testator's estate;—an admission of assets or account, before it will decide a question as to a legacy, &c. &c. The inconveniences of this rule would furnish matter for a pamphlet of themselves."

The learned member then entered on the duties and emoluments of the Six Clerks and Sworn Clerks, which we quoted at pp. 290, 291, *ante*, and have often before adverted to. From that topic Mr. Pemberton turned to the delays in the Masters' Offices, and after going over, in a very masterly manner, all the grounds with which our readers have been made acquainted, he concluded thus:

"It does appear to me that nothing can ever be done effectually, to expedite the business of the Court of Chancery, till a complete alteration is made in the whole system of the Masters' Offices. It should seem, that in former times the obstruction was rather in the offices than in the court itself. We know that as early as the time of Swift and Pope the delays and expenses of this court were the subject of satire. Gulliver, I think, tells us that amongst other subjects on which he was examined by the King of Brobdignag, his majesty made inquiry about the Court of Chancery. "Now," says Gulliver, "I happened to be particularly well qualified to give his Majesty information upon this point, my father having been totally ruined by a suit, in which, after twenty years' litigation, he had obtained a decree in his favour with costs." Yet at this time there was no great delay in the Judges of the Court, few causes appear to have been then in arrear, and the delay must have been elsewhere.

"Sir, I should be sorry that the present Masters, for whom I entertain sincere respect, should take amiss what I have felt it my duty to say of their offices. I make no complaint of them personally, but of the system,—for which they are not responsible; and I trust they will feel that it is only by a full exposure of the evils of that system, that we can hope to see such improvements made in it as will make the offices themselves infinitely more useful to the public, and, therefore, at the same time more honourable, and I doubt not more agreeable to the holders. Sure I am, that until this is done, the Masters will never occupy in public opinion the station which they would then fairly claim. Sure I am, that unless the most searching inquiry is made into the existing evils in the present system of the Court of Chancery, in whatever quarter they may be found, that scandal and opprobrium will never be removed from the Court, which all connected with it must be anxious to shake off.

"In the long statement with which I have troubled the House, I have pointed out some of those matters which, I apprehend, may require correction, and which by this Bill as it stands, or as on recommitment it may be made, the Lord Chancellor will be empowered to correct. Whether any additional judicial power should be given by it, I leave to the consideration of those who have the charge of it. To introducing into the present Bill any alteration in the Court of Exchequer, or any provision for a permanent new Judge, I for one, under

existing circumstances, should object. However desirable those measures may be in themselves, they could not, in my opinion, after what has passed, be properly proposed again during the present Session. But without any such alteration, I think infinite good may be done by this Bill. The powers to be given to the Lord Chancellor will be necessarily most extensive—all but legislative—and I trust they will be as fairly exercised as they are liberally bestowed. The responsibility will be commensurate with the powers. Their exercise will be watched by the House with constitutional jealousy, but by me, at least, without apprehension or suspicion. The Lord Chancellor will have the assistance of most able and zealous coadjutors, and the support of public opinion. However strongly opposed to him as a politician, I have never refused to bear my humble testimony to his merits as a judge; and I have no hesitation in saying that if he applies to the discharge of the duties to be confided to him by this Bill, the same temper and firmness, the same ability and knowledge of his subject which he exhibits in his judicial capacity, he will establish a juster, and, therefore, a more lasting claim to the respect and gratitude of his countrymen, than it has been in the power of any Judge, within living memory, to acquire. He will remove all the abuses which this Bill will place within his reach, and he will leave to his colleagues in this House, who abandoned the larger measure, and to this House which has sanctioned the abandonment, the shame of continuing those grievances which that larger measure alone could have redressed."

MEDICAL JURISPRUDENCE.

DIFFERENT AGES IMPORTANT IN LAW AND FACT.

We some years ago gave several articles on different branches of Medical Jurisprudence, and, during the present vacation, consider it may be useful to resume the subject, selecting such topics as are likely to be acceptable to our readers. For the present we take the subject of the different ages, important in fact and law, abridged from Mr. Chitty's Medical Jurisprudence, which we noticed in our eighth volume.

"The different ages of mankind are important, as well in physic as in law. It is one of the most important considerations of physicians and surgeons, at least with reference to some defects, diseases, and injuries, to ascertain the age of the patient, before administering medicine or performing operation. In the two recent publications of Dr. Copland and the *Cyclopedia of Practical Medicine*, some very valuable observations will be found on the

interesting subject of age, not only in describing the state of the frame, but also the incident diseases and appropriate regimen, at each stage of life. It will be observed, that the division of time by the number seven, has in many respects been marked as well in nature as by customs and law. Dr. Copland, in his excellent work, has observed that the ancients believed that very important changes actually took place in the economy of man at certain periods, the first being the seventh year, and the subsequent epochs answering to the same number, or to numbers resulting from the multiplication of three, seven, and nine into each other, as the twenty-first, the forty-ninth, the sixty-third, and the eighty-first years; the two last being called *grand climacterics*, as the life of man was supposed to have reached its allotted term. But it is now considered, that the renovation and formation of new parts in lieu of old, is constantly taking place rather than any particular change at the end of each seven years, as formerly supposed; but still, an examination of the ancient doctrine will account for many of the present divisions of time, as well in fact as in law. It will be observed, that the *fœtus*, if born at or after the age of seven months from the time of conception, may be sufficiently established in its functions to live; at the end of seven months after birth, first dentition appears; at the end of seven years second dentition takes place, and at that age the law supposes the possibility for mental faculties to be established in a certain degree, whilst under that age there is a total legal incapacity to commit crime. At twice seven or fourteen, male puberty and various corporeal and mental abilities are supposed to exist; and at three times seven, or twenty-one, perfect mental capacity is considered established. Solon divided life into ten septenaries; in the first was detention or falling of the first teeth; in the second, pubescence or puberty in males. So a practice of one of the superior courts for seven years may even govern the construction of a statute;^a and after the lapse of seven years since a person has been heard of, a presumption of his death may be properly admitted;^b (though there is no presumption in law in such case as to the exact time when the death happened, and as to which a jury must form their own opinion upon the particular facts; and even bigamy may be excusable;^c again apprenticeships were required to be for seven years; though Dr. Adam Smith observes, that so long a term is unnecessary as regards instruction in a trade; and leases are usually for seven, fourteen or twenty-one years, or for the latter, determinable at the end of the first seven or fourteen; so the punishment of transportation is usual for seven or fourteen years;

^a Tidd's Prac. Introd.; and *Tyson v. Thomas*, M'Clel. & Young's Exch. Rep. 127.

^b *Doe d. Nepean*, 5 Bar. & Adol. 86; 2 Nev. & Mann. 210, S. C.; 2 Stark. Ev. 261.

^c 2 Stark. Evid. 261; 1 Jac. 1, c. 11, sect. 2.

and at thrice seven, or the age of twenty-one, in most countries, and by our law, males as well as females are completely competent to manage their property: and five times seven or thirty-five has generally been considered the preferable age for the marriage of males; nine times seven is the grand climacteric; and ten times seven or seventy is the supposed limit of life.

Medical authorities arrange the subject of age under six principal periods, as infancy, childhood, boyhood, adolescence, adult age, and declining or old age, with sub-divisions, as 1st, that of infancy, which is again divided into the period between birth and the commencement of the first dentition; 2dly, that of childhood, extending from the completion of the first to the completion of the second dentition; 3dly, that of boyhood or girlhood, from the seventh or eighth year to the commencement of puberty; 4thly, that of adolescence, commencing with the first appearance of puberty, and extending to adult age; 5thly, adult age, which again is divided into two epochs, first of early adult age, from twenty to thirty in females, and from twenty-four to thirty five in males, and secondly, mature age or confirmed virility, estimated at from thirty to forty or forty two in females, and from thirty-four to forty-eight in males; 6thly, declining and old age, and which are divided into four epochs, as declining age, green old age, advanced old age, or ripe old age, and decrepitude or second infancy; and each of which periods has its incidents, defects, and diseases, and requires particular medical and moral treatment. We will attempt to give a graduated scale of ages, more especially as they are important in connection with legal subjects.

"*Birth* is established not merely by proof of breathing, but also of at least one circulation of the blood through the lungs, as well as the larger circulation, thereby showing that respiration, circulation, and the brain or nervous function, are adequate to sustain an independent existence, at least for a time; crying violently or frequently is evidence of birth, because it establishes the existence of all the three functions, but it is not the only evidence.

"If the delivery and birth be occasioned by the Cæsarian operation, the child will inherit to the mother; but the father cannot be tenant by the curtesy unless the child be born in the life-time of the mother.

"If the child be born alive, so as to have established a separate existence, and instantly afterwards die, the father may be tenant by the curtesy; and subsequent killing is murder; and even an injury previous to the delivery, causing the death subsequently to such delivery, may be murder or manslaughter.

"In case of superfœtation or twins, primogeniture depends on actual proof which of the two children was in fact first delivered, and not on any fixed rule in our law.^d

"From birth until the end of the seventh year, mental capacity is gradually developed, and most of the ordinary ideas, gestures, expressions and tones of voice are acquired by imitation during that time, and by repetition have become so deeply impressed as not to be readily afterwards effaced, and therefore, it is important that the child should be placed in such society only as will afford the best example. Dr. Barlow has observed, that even at the earliest age of infancy the moral laws are not to be disregarded; and those laws pronounce that moral feelings, no less than the physical powers, acquire force by exercise, and that the surest way of weakening those which, when tending to excess (as in the case of an irritable temper in a child) tend to evil, is to consign them as much as possible to quiescence. Great care is, therefore, necessary not to arouse angry passions in infancy, nor before the other moral feelings, and the intellectual powers by which they are in later years controllable, have become perfectly, or so strongly developed as to be available in counteracting the influence of passion or bad temper. This principle is applicable to every period of life, and the interesting stage now under discussion should have the full benefit of it. Under seven years an infant is in law considered incapable of committing any crime;^e from that age till fourteen criminal responsibility (except as to rape or sexual crime) depends on actual mental capacity, though the presumption is still in favour of the infant. As regards evidence, an infant under seven may be a witness, if he be sensible of the obligation of an oath; but he ought to be examined as to his competency before he goes before a grand jury,^f and if he be not competent the trial may be postponed;^g but neither the testimony of a child without oath, nor evidence of any statement which he has made to any other person, is admissible.^h The ancient rule was, that an infant under seven could not be examined as a witness under any circumstances;ⁱ but it has been observed that such rude and inartificial rule of measuring capacity by years was overruled in the case of *Brazier*, where it was unanimously held by all the judges, that a child of any age, if capable of distinguishing between good and evil, might be examined upon oath.^k The law also makes another distinction as to the age, viz. that if in a prosecution for a rape, or rather carnal knowledge, if the prosecutrix be an infant of tender years, the whole of her account recently given seems to be admissible, because it is of the highest

^e 4 Bla. Com. 23.

^f 1 Stark. Ev. 93, 94.

^g Id.

^h Id.; *Brazier's case*, Leach, Cr. C. 287; *Res v. Tucker*, Phil. on Evid. 19.

ⁱ 1 Stra. 700; 1 Hale P. C. 634, 635.

^k *Brazier's case*, Leach, Cr. C. 237; *Res v. Powell*, id. 128; 1 East, P. C. 443; 2 Stark. Ev. tit. Rape 699. But such reasoning would tend to establish, that an infant under seven might also be guilty of crime.

^d See cases cited, *Doe v. Nepean*, 5 B. & Adol. 91.

importance to ascertain the accuracy of her recollection.¹ But upon an indictment for an attempt to commit a rape upon, the particulars of the complaint made by prosecutrix recently after the injury are not admissible in evidence.^m

"Under eight and above sixteen no infant is to be apprenticed to a chimney sweeper, and if he be, no settlement is conferred.ⁿ

"Before the age of nine no infant is to be bound as a parish apprentice; and the 3 & 4 Will 4, c. 103, for the regulation of factories, prohibits the employment of children under nine years, except in mills for the manufacture of silk.

"The maliciously, either by force or fraud, leading or taking away, or decoying or enticing away, or detaining any child under ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, or with intent to steal any article upon or about the person of such child, and the receiving or harbouring such child, is transportable for seven years, or imprisonment with hard labour, with an exception in favour of the father of an illegitimate child.^r This enactment has been objected to as limiting the crime to the substruction of a child so young as under ten years of age.

"Carnal knowledge of a female between ten and twelve, even with her consent, is a misdemeanour punishable with imprisonment and hard labour.^s

"At the age of twelve a female has, in legal consideration, attained puberty, and is, consequently, considered by law competent to marry;^t but properly even later than the age of fourteen should have been fixed by law instead of twelve.

"Males at twelve years old may take the oath of allegiance.^u

"Under the age of thirteen certain hours of work are prescribed in factories and mills, viz. not on an average more than eight hours per day, (excepting in manufactures of silk, in which ten hours are allowed). Between the age of thirteen and eighteen not more than twelve hours work per day are allowed.^v

"Under the age of fourteen both sexes are

presumed not to have been guilty of any crime but proof of sufficient knowledge between good and evil makes them liable for offences; so that, unless great weakness of intellect appear, they are liable to criminal punishment for crimes of commission after the age of seven, but in no case for a rape or sexual crime under fourteen.^w

"Males after fourteen are competent to marry with consent, or by bands not prohibited;^x but before the age of twenty one consent of parents is essential, or is implied to have been given by publication of banns not prohibited. A marriage by license cannot be obtained without affidavit of the full age of twenty one having been attained by both the parties;^y but if the affidavit be false in that respect, the marriage will nevertheless be valid.^z

"A male or female, after attaining the age of fourteen, may appoint his or her own guardian; and may make a will of personality, although not of realty until the age of twenty-one has been attained.^a

"Both sexes, between the ages of fourteen and twenty one, are liable to be punished for crimes and offences of commission, but not for crimes and offences of omission, excepting indictments for not repairing an highway or bridge, where the liability was *ratione tenuræ*.^b They are not liable to be sued on contracts, excepting for necessities. But an apprentice is compellable to serve until twenty one. Between the age of fourteen and twenty-one is considered the most important time for parents and preceptors to observe the moral, religious, and intellectual attainments of youth.^c

"The abduction of a female, under the age of sixteen, without the consent of parents, is a misdemeanour, punishable with imprisonment.^d

"After the age of seventeen a male or female might formerly have acted as executor, though not as administrator; but now he cannot act as executor before he has attained the age of twenty-one,^e though if an infant, even under seventeen, he named executor jointly with an adult, he must in an action be joined as a co-plaintiff.^f

"Under the age eighteen, no person is to work at night, nor more than twelve hours a day;^g and it should seem that as the full strength, health and constitution, are not settled till about the age of twenty-three, even so many hours labour should not be allowed

¹ *Brazier's case*, East P. C. 443; 2 Stark. Ev. tit. Rape, 700.

^m Per Holroyd, J., in *Res v. Clarke*, 2 Stark. Rep. 241; 2 Stark. Evid. tit. Rape, 700, but who adds *sed quære*.

ⁿ 28 Geo. 3, c. 48, s. 4; 4 B. & Cres. 466.

^p 9 Geo. 4, c. 31, s. 17, 18.

^q *Res v. Russen*, 1 East, P. C. 438; 4 Car. & P. 249; *Res v. Cox*, 1 Mood. Cr. C. 337; *Res v. Reekspeare*, id. 342; overruling *Res v. Russell*, 2 Mood. & M. Cases N. P. 112, coram Taunton, J.

^r 9 Geo. 4, c. 31, s. 21.

^s Id. s. 17, 18.

^t 1 Bla. C. 436; Russ. & R. Cr. C. 48.

^u 1 Bla. Com. 463.

^v 3 & 4 Will. 4, c. 103, ss. 1, 2, 8; 4 Wm. 4, c. 8. Twelve hours are much too long.

^w 2 Stark. Evid. tit. Infant, 407.

^x 1 Bla. Com. 436; Russ. & Ry. C. C. 48.

^y 1 Bla. C. 437, 438; 2 Phil. 222, 440.

^z *Res v. Jacobs and others*, Chitty's Col. Stat. tit. Marriage, 727, n. (a).

^a 1 Bla. Com. 463.

^b 4 Bla. C. 22, 23; 2 Stark. Ev. tit. Infant, 407; 1 Hale P. C. 20 to 22.

^c Copl. Dic. Pr. Med. tit. Age.

^d 9 Geo. 4, c. 31, s. 20.

^e 1 Bla. Com. 463.

^f See cases, 1 Saund. Rep. by Patteson and Williams, 291, i.

^g 3 & 4 Wm. 4, c. 103, s. 1, 2.

until after that age. Eighteen is the earliest age for service in the army; and it has been clearly shewn that that age is too early by five years, and productive of many deaths, and always injurious to the individuals, and occasioning useless loss and expence to the state. Until the age of twenty-three growth continues, and strength is not completely established. The same principle should be applied to marriages and to all laborious employments.

"Males and females, after attaining the age of twenty-one, are *sui juris*, and may perform every act,^h unless where property has been expressly given not to be enjoyed until a subsequent age. They may marry, without consent of parents, by license on affidavit of both the parties being of age.ⁱ If apprenticed when under twenty-one, he may in general avoid the same on attaining that age, after a reasonable notice;^j and under the Marine Mutiny Act, 4 Wm. 4, c. 4, s. 40, &c. an apprentice cannot be claimed by the master after that age. After the age of twenty-one, and until that of sixty, males are liable to serve as jurors.^k After the age of twenty-one, no one can be deemed a poor child within the meaning of stat. 56 Geo. 3, c. 139.^l

"A person is completely of age after the first instant of the day before the twenty-first anniversary of birth day, though forty-seven hours and fifty-nine minutes short of the complete number of days, counting by hours;^m and this mode of calculating age and time is applicable to all the other ages before or after twenty-one.

"Forcible abduction of any woman, possessed of certain property, with intent to defile, marry, &c., is a misdemeanour, and transportation for at least seven years, or imprisonment for four years.ⁿ

"Twenty-three years is the earliest age when men should serve in the army, or be employed in any very laborious occupation, because until that time, growth and advancement in strength of body are in progress, and not fully established.

"No person is to be admitted a deacon before he shall have attained the age of twenty-three years complete; and no person shall be admitted a priest before he has attained twenty-four complete.^o But the power of granting a faculty or dispensation as regards deacons of earlier age is saved by the statute.

"Thirty-five was considered by the Romans,

Athenians, &c., as the best age for men to marry.^p

"After the age of sixty, men are not bound to serve on juries, &c.

"The age of sixty three is the first grand climacteric, and is supposed to be a critical age, and has been ably described by Sir Henry Hallford, with its incident climacteric disease, which occurs between the ages of fifty and seventy-five, but more frequently about sixty-three. At this age sometimes, as in Westminster, men are expressly exempted from serving as constables.^q

"Seventy years are the scriptural limit of life, though there are, especially of late, many exceptions, and it is supposed that the average of old age has of late increased, though on an average only one in 15,000 reaches 100 years; nor is the age of eighty one (the second grand climacteric) but rarely attained.

"The survivorship of two or more is to be proved by facts, and not by any settled legal rule of law or prescribed presumption.^r

"In case of the death of an ancestor, who was tenant in fee, before midnight of the day when rent becomes due, the heir and not the executor is entitled to the rent.^s But if a tenant for life die on the rent day, his executor is entitled to the whole rent, as well at common law as by the express terms of the statute, 11 G. 2, c. 19, s. 15.^t If he die before the rent day, then by the terms of that act there is to be an apportionment of the rent between the executors and the remainder-man, unless there has been a lease pursuant to a leasing power, in which latter case the remainderman will be entitled to all the rent growing due.

"An heir may lay the demise in ejectment on the day of the death of his ancestor.^u

"There is a legal presumption of death after a person has not been heard of for seven years;^x but the time of the death, when material, must be proved by express evidence, depending upon the particular circumstances of the case.^y

"Within fourteen days after death in general, decomposition has so advanced that identity cannot be discovered, excepting by some strongly developed peculiarity; but in a drowned body adipocire is not produced until five or six weeks after the death, a fact exceedingly important to be kept in view in some judicial inquiries relative to the time of death.^z

p 6 Geo. 4, c. 50, s. 1.

q 31 Geo. 2, c. 17, s. 13; Burn, J., Constable.

r *Doe v. Nepean*, 5 B. & Adol. 91, 92; G. Smith, 510; 2 Stark. Evid. 261.

s *Duppa v. Mayo*, 1 Saund. Rep. 287, 288, c. note 17.

t 11 Geo. 2, c. 19, s. 15; 1 Saund. Rep. 288 c, note 17, and note (z); *Norris v. Hurrierson*, 2 Madd. 268.

v 3 Wils. 274.

x *Doe v. Nepean*, 5 Bar. & Adol. 86; 2 Starkie's Evid. 261, 688.

y *Watson v. King*, 1 Stark. Rep. 121; 2 Stark. Evid. 261,

h 1 Bla. Com. 463.

i 4 Geo. 4, c. 76, s. 10.

j See cases, Burn, J. tit. Apprentice, VIII. (2); when not, id. *ibid.*; and *Res v. Bedwardine*, 5 B. & Adol. 176.

k 6 Geo. 4, c. 50, s. 1.

l *Res v. Bedwardine*, 5 B. & Adol. 169.

m 1 Bla. Com. 463; *Herbert v. Torball*, 1 Sid. 162; 1 Keb. 589; Raym. 84, S. C.; 1 Salk. 44; Chit. Gen. Prac. vol. i, 766.

n 9 Geo. 4, c. 31, s. 19.

o 44 Geo. 3, c. 43; *Roberts v. Pain*, 3 Mod. 67.

MISCELLANEA.

CANONS OF DESCENT.

By an Apprentice of the Law.

Canon 1.

Estates go the Issue, (*item.*)
Of him last seized in *infantem*,*
Like cow-tails downward, straight they tend,
But never lineally ascend.

Canon 2.

This gives that preference to males,
At which a lady justly rails.

Canon 3.

Of two males, in the same degree,
The eldest only heir shall be,
With females in this order break,
And let them all together take.

Canon 4.

When one his worldly strife hath ended,
Those who are lineally descended,
From him as to his claims and riches,
Shall stand precisely in his breeches.

Canon 5.

When lineal descendants fail,
Collaterals the land may nail:
So that they be (and that a bore is),
De sanguine progenitoribus.

Canon 6.

The heir collaterals, d'y'e see,
Next kinsman of whole blood must be.

Canon 7.

And of collaterals, the male
Stocks, are preferred to the female;
Unless the land comes from a woman,
And then her heirs shall yield to no man.

Hone's Table Book, vol. 2. p. 36.

MASTERS EXTRAORDINARY IN
CHANCERY.

*From 25th August to 18th Sept., 1840, both inclusive,
with dates when gazetted.*

Haywood, Matthew, Bridgnorth. Aug. 28.
Doughty, Thos. Neale, Rugby, Warwick. Sept. 4.

DISSOLUTIONS OF PROFESSIONAL PART-
NERSHIPS.

*From 25th August to 18th Sept., 1840, both inclusive,
with dates when gazetted.*

Brighton, Thomas, and Robert Leigh, Downham
Market, Norfolk, Attorneys. Aug. 25.

* The student will observe, that these canons are now applicable only to descents which take place on the death of a person who shall have died before the first of January 1834. *Vide* 3 & 4 Wm. 4, cap. 106. Ed.

Hammet, Joseph Pope, and Wm. Calvert Shone, Southampton Buildings, Attorneys and Solicitors. Aug. 28.

Howe, Thomas, Henry Whittaker, and Joseph Tatham, New Square, Lincoln's Inn, Attorneys and Solicitors. Sept. 1.

Lovegrove & Hurrock, Reading, Berks, Attorneys, Solicitors, and Conveyancers. Sept. 18.

Parkes, Joseph, and Solomon Bray, Birmingham, Attorneys and Solicitors. Sept. 1.

Woodroffe, Wm. and Henry Lewin, Lincoln's Inn New Square, Attorneys at Law. Sept. 18.

BANKRUPTCIES SUPERSEDED.

*From 25th August to 18th Sept., 1840, both inclusive,
with dates when gazetted.*

Field, George, Beaumont Street, Saint Mary-le-Bone, Coach Builder. Sept. 8.

Gower, John Lewis, Tenby, Pembroke, Surgeon and Apothecary. Sept. 11.

Herd, James, Liverpool, Brewer. Sept. 1.

Price, Thomas, Brecon, Carrier. Sept. 18.

Rowbottom, Wm., Mottram in Longendale, Mottram, Chester, Grocer and Tallow Chandler. Sept. 1.

Thornton, John, Bradford, York, Woolstapler. Aug. 28.

BANKRUPTS.

*From 25th August to 18th Sept., 1840, both inclusive,
with dates when gazetted.*

Atkin, Charles, Rosemary Lane, Baker. *Edwards*, Off. Ass.; *Saunders*, Queen Street Place. Sept. 4.

Anderson, James, late of Clifton Street, Dealer in Jet, but now of the City of Bristol, Scrivener. *Crosby*, Bristol; *Bicknell & Co.*, Lincoln's Inn Fields. Sept. 8.

Ayre, Andrew, Seaham Harbour, Durham, Grocer and Bread Baker. *Griffith*, Raymond Buildings, Gray's Inn; *Moore*, Bishop Wearmouth. Sept. 8.

Atkinson, Matthew, Temple Sowerby, Westmoreland, and Jonathan Laidman, the elder, Penrith, Cumberland, Bankers. *Chester*, 11, Staple Inn; *Maychell*, Penrith. Sept. 15.

Archer, Thos., Hanley, Stafford, Woollen Draper and Tailor. *Willis & Co.*, Tokenhouse Yard; *Stevenson*, jun., Hanley; *Mortimer*, Manchester. Sept. 15.

Alaking, Frederick, Langley Street, Long Acre, Currier. *Groom*, Off. Ass.; *Hepburn*, 12, Copthall Court. Sept. 18.

Austin, Joseph Pomphrey, Bristol, Paper Maker. *Phillipotts & Co.*, Monmouth; *Hinton*, Bristol; *Walker & Co.*, 13, King's Road, Bedford Row. Sept. 18.

Bell, Robert Paxton, Newcastle-upon Tyne, Fruit-er. *Weymouth & Co.*, Cateaton Street; *Bates*, Newcastle-upon-Tyne. Aug. 25.

Brown, William Mawman, jun., Skinner's Place, Size Lane, Bucklersbury, London, Merchant. *Lackington*, Off. Ass.; *Sawyer*, Bow Lane, Cheapside. Aug. 28.

Bradford, Frederick, and Timothy Healey, Great Trinity Lane, London, Wholesale Stationers and Rag Merchants. *Thrymmed*, Off. Ass.; *Walters & Co.*, Basinghall Street. Sept. 4.

Bonner, James, and Charles Gibbons, Thame,

- Oxford, Furniture Brokers and Brickmakers. *Smith*, Chancery Lane. Sept. 4.
- Blackett, William Wilks, Richard Thackray, and Robert Tennant, Manchester, Cloth and Linen Merchants. *Walker*, Furnival's Inn; *Blackburn*, Leeds. Sept. 4.
- Beaver, John Atwood, Manchester, Cotton Spinner and Manufacturer. *Johnson & Co.*, Temple; *Higson & Co.*, Manchester. Sept. 4.
- Bastow, Thos., sen., Joseph Jackson, and Thos. Bastow, jun., Birmingham, Brewers. *Austen & Co.*, Gray's Inn; *Bower*, Birmingham. Sept. 11.
- Biggs, Charles Ferris, Birmingham, Warwick, Mercer and Draper. *Addington & Co.*, Bedford Row; *Jones*, Alcester. Sept. 11.
- Brown, Thomas, and Thomas Brown the younger, Mansell Street, Goodman's Fields, Plumbers, Painters, and Glaziers. *Groom*, Off. Ass.; *Messrs. Baddeley*, 12, Leman Street. Sept. 15.
- Bauer, Wm., Oxford Street, Laceman. *Edward Edwards*; *Reed & Shaw*, No. 2, Friday Street. Sept. 15.
- Bacon, Jonathan George, late of Oswestry, now of Liverpool, Victualler. *Hayward*, Oswestry; *Penniger & Co.*, Gray's Inn. Sept. 15.
- Babb, John, Chester, Woollen Draper and Tailor. *Chester*, Staple Inn; *Roberts*, Chester. Sept. 15.
- Barrett, William, Keighley, York, Worsted Stuff Manufacturer. *Blake & Co.*, 6, King's Road, Bedford Row. *Metcalfe*, Keighley. Sept. 18.
- Clapham, Anthony, Friar's Goose, Gateshead, Durham, Soda and Alkali Manufacturer. *Meggison & Co.*, King's Road, Bedford Row; *Brockett & Co.*, Newcastle-upon-Tyne. Sept. 1.
- Caldecott, Robert, Chester, Draper and Mercer. *Reed & Co.*, Friday Street, Cheapside; *Roberts*, Chester. Sept. 4.
- Clark, John, Snodland Mills, near Maidstone, Kent, Paper Manufacturer. *Groom*, Off. Ass.; *Walters & Co.*, Basinghall Street. Sept. 8.
- Dearden, James, Liverpool, Coal Dealer. *Woodcock & Co.*, Wigan; *Addington & Co.*, Bedford Row. Aug. 25.
- Dartnall, Henry, Cam, Gloucester, Clothier. *Holman*, Coleman Street; *Bishop*, Dursley. Aug. 28.
- Dickenson, Benjamin, Leamington Priors, Warwick, Banker and Builder. *Parkes & Co.*, South Square, Gray's Inn; *Cope*, Leamington Priors. Aug. 28.
- Daft, Charles, Great Bridge, Tipton, Stafford, Timber Dealer and Builder. *Miller*, Sackville Street; *Hunt*, Wednesbury. Aug. 28.
- Dauncey, William Dalton, Birmingham, Ironmaster. *Chaplin*, 3, Gray's Inn; *Stubbs & Co.*, Birmingham. Sept. 15.
- Dickenson, Stephen, Huddersfield, York, Clothes Dealer and Retailer of Beer. *Lake & Co.*, 33, Basinghall Street; *Jagues & Co.*, Ely Place; *Battye & Co.*, Huddersfield. Sept. 15.
- Dobson, Thomas, of Leeds, York, Innkeeper. *Rushworth & Co.*, 10, Staple Inn; *Cooke*, Wakefield. Sept. 18.
- Evans, Martha, Stone-ditch, Narbett, Pembroke, Innkeeper and Farmer. *Ashley*, Shoreditch; *Lock*, Pembroke. Aug. 25.
- Everitt, William, Thames Street, London, Victualler. *Johnson*, Off. Ass.; *Sawyer*, Bow Lane, Cheapside. Aug. 28.
- Edwards, William, and George Walker, Chester, Nurserymen, Seedsmen, and Florists. *Walker*, Chester; *Bolton & Co.*, Austin Friars. Sept. 11.
- Gardner, John, sen., Godalming, Surrey, late Common Brewer. *Gibson*, Off. Ass.; *Turner & Co.*, Basing Lane. Sept. 11.
- Greenwood, William Greenacre, Moorside, Lancaster, Corn Dealer. *Jagues & Co.*, 8, Ely Place; *Hep & Co.*, Huddersfield. Sept. 15.
- Hunt, Reuben, jun., Woburn, Buckingham, Engineer. *Cannan*, Off. Ass.; *Hewitt*, Tokenhouse-yard. Aug. 25.
- Hearn, John, jun., Salisbury, Wilts, Bookseller and Stationer. *Groom*, Off. Ass.; *Vandercom & Co.*, Bush Lane. Sept. 4.
- Hall, Thomas and John Hall, Birmingham and of Walbrook Buildings, London, Factors and Commission Agents. *Burfoot & Co.*, Temple; *Page*, Birmingham. Sept. 4.
- Hodgson, William, Salford, Manchester, Sizer. *Milne & Co.*, Temple; *Darbishire*, Manchester. Sept. 4.
- Higgs, John, Watling Street, London, Cheese Factor and Agent, and late also of Greenwich, Kent, Cheesemonger. *Alager*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. Sept. 8.
- Holgate, Elizabeth, Manchester, Callenderer and Packer, (firm Alexander Lindsey and Co.) *Thomas*, Manchester; *Walmley & Co.*, 43, Chancery Lane. Sept. 15.
- Holdsworth, George Mirfield, York, Clothier. *Battye & Co.*, 20, Chancery Lane; *Thomas Leadbeater*, Mirfield. Sept. 15.
- Hopkinson, George, Liverpool, Coach Builder. *Chester*, Staple Inn; *Cort*, Liverpool. Sept. 15.
- Hurley, Ambrose Clark, Bristol, Coal Merchant. *Day*, Bristol. Sept. 15.
- Hervy, John Morant, Thames Foundry, Brick Lane, Old Street, Ironfounder. *Groom*, Off. Ass.; *Gibson & Co.*, Lombard Street. Sept. 18.
- Hill, Henry, Penkhill, Stoke upon Trent, Stafford, Malster. *Price & Co.*, Lincoln's Inn; *Bishop*, Shelton Hall, Staffordshire. Sept. 18.
- Johnson, Richard William, and Ben Johnson, Gloucester, Wine Merchants and Distillers. *Whitcombe & Co.*, Gloucester; *Plucknett & Co.*, Lincoln's Inn Fields. Sept. 1.
- Jones, Ebenezer, Liverpool, Soap Manufacturer. *Cornthwaite*, Dean's Court, Doctor's Commons. *Kenyon & Co.*, Liverpool. Sept. 4.
- Kelly, James, and John Kelly, Rochdale, Lancaster, Joiners and Builders. *Johnson & Co.*, Temple; *Lord*, Rochdale. Sept. 8.
- Laycock, Thomas, Leeds, York, Cloth Manufacturer. *Robinson & Co.*, Essex Street, Strand; *Ward and Co.*, Leeds. Aug. 25.
- Lucas, Robert de Neufville, late of Fenchurch Street, London, but now of Bridge Street, Southwark, Surrey, Money Scrivener. *Alager*, Off. Ass.; *Mann*, Moorgate. Sept. 11.
- Lumb, Luke, Kinston Upon Hull, Paperhanging Manufacturer. *Willan*, Gray's Inn; *Jackson*, Hull. Sept. 11.
- Morris, William, Brighthouse, Halifax, York, Wire Drawer. *Newton & Co.*, 14, South Square, Gray's Inn; *Edwards*, Halifax. Sept. 18.
- Marsden, Richard, Brynmawr, Llanelly, Brecon, Linen Draper. *Baker*, Abergavenny; *Messrs. Bennett*, Manchester; *Fennell & Co.*, Bedford Row. Aug. 25.
- Mayfield, William, Spalding, Lincoln, Grocer and Draper. *Hindmarsh & Co.*, Crescent, Jewin Street, Cripplegate. Sept. 1.
- Morris, Isaac, Mayfield, Stafford, Cattle Dealer. *Litchfield & Co.*, Chancery Lane; *Tomlinson*, Ashbourne. Sept. 8.
- Mainwaring, Richard, Coltham Furnaces, Stafford, Coal and Iron Master. *Alban and Benbow*,

- Stone Buildings; *Bourne & Co.*, Dudley. Sept. 18.
- Nightingale, Robert, Exeter, Draper. *Clowes & Co.*, Temple; *Laidman*, Exeter. Sept. 8.
- O'Meara, Denis, Leeds, York, Cloth Merchant. *Barr & Co.*, Leeds; *Blackburn*, Leeds; *Walker*, Furnival's Inn. Aug. 23.
- Powell, William, Birmingham, Brass Founder. *Williams & Co.*, Hatton Garden; *Marshall*, Birmingham. Sept. 4.
- Parker, Thomas, Tooley Street, Southwark, Victualler. *Edwards*, Off. Ass.; *Smith*, 11, Serle Street, Lincoln's Inn. Sept. 18.
- Pybus, James, Leeming Lane, North Riding York, Innkeeper and Victualler. *Taylor & Co.*, 41, Bedford Row; *Presl*, Masham, Yorkshire. Sept. 18.
- Richards, Joseph, Newcastle Street, Strand, Surgeon and Apothecary. *Green*, Off. Ass.; *Wharton*, Lincoln's Inn Fields. Aug. 28.
- Roelly, Joseph, Richardson Street, Long Lane, Hermondey, Manufacturing Chemist. *Edwards*, Off. Ass.; *Shield & Co.*, Queen Street, Cheapside. Sept. 4.
- Rowlett, John, Liverpool, Merchant. *Chester*, Staple Inn; *Davenport & Co.*, Liverpool. Sept. 4.
- Robertson, James, Wootton-under-Edge, Gloucester, Draper. *Poole and Gamlin*, Gray's Inn; *Williams & Co.*, Bristol. Sept. 15.
- Smith, William, Leeds, York, Chemist and Druggist. *Few & Co.*, Henrietta Street, Covent Garden; *Booth*, Leeds. Aug. 25.
- Stanley, George, late of Portland Place, Kensington, Middlesex, but now of Southampton, Manufacturer of Bituminous Pavement. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. Aug. 25.
- Smith, John, Leek, Stafford, Brewer. *Weller*, Essex Street; *Hall*, Northampton. Aug. 28.
- Scudamore, Thomas, Birmingham, Chemist and Druggist. *Unett & Co.*, Birmingham; *Tooke & Co.*, Bedford Row. Aug. 28.
- Sager, William, Rochdale, Lancaster, Wool Dealer and Commission Agent. *Higson & Co.*, Manchester; *Johnson & Co.*, Temple. Sept. 1.
- Smith, Edward, Bishop Wearmouth, Durham, Merchant. *Burn*, jun., Sunderland; *Compton*, Church Court, Old Jewry. Sept. 1.
- Smarr, William, Honiton, Devon, Cheese and Butter Factor. *Poole & Co.*, Gray's Inn; *Williams & Co.*, Bristol. Sept. 4.
- Smith, John, Thorne, York, Draper and Grocer. *James*, Basinghall Street; *Jervis*, Sheffield. Sept. 8.
- Segdwick, Armistead, Macclesfield, Chester, Ironmonger. *Bower & Co.*, Chancery Lane; *Price & Co.*, Wolverhampton; *Procter*, Macclesfield. Sept. 8.
- Summers, Jeremiah William, Sunderland, Durham, and of Ovingham, Northumberland, Coke Manufacturer and Merchant. *Brown*, Sunderland. Sept. 1.
- Smelt, Anthony, Melton Mowbray, Leicester, Linen and Woollen Draper. *Thompson*, Stamford; *Clowes & Co.*, Temple. Sept. 11.
- Smith, William, and Josiah Smith, Hatton Garden and Edinburgh, (firm, William Smith and Nephew) Cabinet Makers and Mahogany Merchants. *Whitmore*, Off. Ass.; *Nield*, King Street, Cheapside. Sept. 15.
- Self, Edward, North Curry, Somerset, Draper and Grocer. *White & Whitmore*, Bedford Row; *Brittan*, Albion Chambers, Small Street, Bristol. Sept. 15.
- Stelfox, Joseph, Manchester and Pendleton, Agent Yarn Dealer and Bleacher. *Hitchcock & Norris*, Manchester; *Johnson & Co.*, Temple. Sept. 15.
- Trangmar, John Tanner, Brighton, Sussex, Tea Dealer, Grocer and Cheesemonger, and Oil and Chinaman. *Cooper*, Brighton; *Hore*, Serle Street, Lincoln's Inn Fields. Aug. 25.
- Taylor, George, Leicester, Hosier. *Toller*, Gray's Inn Square; *Toller*, Leicester. Sept. 4.
- Thomas, David, Narbeth, Pembroke, Corn and Provision Merchant. *White & Co.*, Bedford Row; *Messrs. Brown*, Bristol. Sept. 8.
- Taylor, William Garnett, Little Bolton, Lancaster, Cotton Spinner and Bleacher. *Milne & Co.*, Temple; *Briggs*, Bolton-le-Moors. Sept. 18.
- Topham, John, Liverpool, Lancaster, Money Scrivener, Broker. *Watson*, Liverpool; *Adlington & Co.*, Bedford Row. Sept. 18.
- Verrey, John, Mansfield Place, Kentish Town, Middlesex, Brewer. *Abbott*, Off. Ass.; *Winter & Co.*, Bedford Row. Aug. 25.
- Wilson, Charles, Manchester, Woollen Draper and Tailor. *Heron & Co.*, Manchester; *Johnson & Co.*, Temple. Aug. 25.
- Warren, John, George Street, Hanover Square, Dentist. *Whitmore*, Off. Ass.; *Becke & Co.*, Lincoln's Inn Fields. Sept. 4.
- Watson, Robert Green, and Charles Paris, Bures St. Mary, Suffolk, Malsters and Merchants. *Messrs. Stedman*, Sudbury. Sept. 4.
- Wookey, Edward, and Francis Hares, Bristol, Drapers. *Ashurst*, Cheapside; *Osborne & Co.*, Bristol. Sept. 11.
- Williams, John, Narberth, Pembroke, General Shopkeeper. *Owen*, Narberth. Sept. 11.
- Webster, George, 21, Milk Street, London, Warehouseman and Agent. *Alsager*, Off. Ass.; *Turner & Hensman*, Basing Lane. Sept. 15.
- Wood, Joseph, Barnsley, York, Linen Manufacturer. *Perkins*, 15, Gray's Inn; *Shepherd*, Barnsley. Sept. 15.
- Willett, Joseph, Lancaster, Builder. *Lewer*, 10, King's Road, Bedford Row; *Achers*, Manchester. Sept. 15.
- Wheeler, Henry, Threadneedle Street, and Chestow Place, Camberwell, Stock Broker. *Alsager*, Off. Ass.; *Bush & Master*, 7, St. Mildred's Court. Sept. 18.

PRICES OF STOCKS.

Saturday, 19th September, 1840.

3 per Cent. Consols Annuities - - - - -	88½ a ½
New 3½ per Cent. Annuities - - - - -	97½ a ½
India Bonds (div. 3 per Cent.) - - - - -	5 dis.
3 per Cent. Cons. for Acct. 16th Oct. - - -	88½ a ½
Exchequer Bills—	
1000l. at 2½d. }	- - - - - 8s. 6d.
500l. at 2½d. }	
Small at 2½d. }	

The Legal Observer.

SATURDAY, OCTOBER 3, 1840.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CHANCERY REFORM.

No. I.

IN commencing a new series of articles on Chancery Reform, we have no fear that the subject will be considered "flat, stale, or unprofitable" by any of our readers. In the course of the last year we have had ample encouragement to pursue the subject; we have seen the profession in all its branches fairly roused to its importance: we have seen its attention directed to the real grievances connected with it, and a sincere desire awakened to remedy them. The profession is in fact now beginning to *think* what a Court of Equity should and can and must be made. Instead of being looked on as a mere source of profit, a sort of necessary evil—which must at times be unavoidably resorted to—a remedy in nine cases out of ten worse than the disease which it is intended to cure—professional men are now beginning to ask themselves what are the real objects which should be accomplished by a Court of Equity; whether a suit must necessarily last for several years; whether the results of all ordinary suits may not be much more easily obtained than at present; whether equitable principles being for the most part sound and right, and adapted to give justice to all, the machinery for working them be not unsound and wrong, and fraught with injustice to all. Men have now begun to ask themselves why it is that while the principles of the Court of Equity have kept pace with the spirit and necessities of the age, and have had the most steady and brilliant light shed on them for upwards of two hundred years, the frame-work of the Court should have remained almost entirely unchanged;—the number of judges nearly the same—the offi-

cers precisely the same;—that while the demands for justice, and the amount of property to be administered, have increased threefold within the last hundred years, the persons to dispense them remain the same in number. They begin also to agree that that which was formerly intended to facilitate the business of the Court, and did perhaps facilitate it, now only incumbers it. Men, we say, have begun to ask themselves these questions: to admit the grievance, to devise the remedy, and to prepare themselves for the necessary reform. At this moment there are many minds at work on the subject, and they will return to their duties with all the energy which the leisure and relaxation of the vacation gives to men able and willing to work.

And here we cannot but rejoice that the good work of reform will proceed from the profession itself. No law reform worth one farthing was ever made which did not proceed from the bosom of the law. To effect a reform in the law, you must be fully acquainted with the grievance intended to be remedied—where it lies—how far it extends—what part can be cured by human aid—and what is the necessary fault of the system. The art of healing consists in knowing when you may safely let nature work the cure, and when you may properly interpose, and if a medicine should be given, what that medicine should be. To tear away a portion of the law in ignorance of the other parts; to cut off what seems an excrescence without knowing exactly whence it comes and how far it extends, and hope that all will go right, is to do, in most cases, more harm than good. What is wanted is, great knowledge and long practical experience, to trace out the real source of the evil,

to see how far it is inseparable from the system, to find a fitting substitute, and then to cut down upon it, and extirpate it. It is thus that not only a safe reform, but a far more extensive reform, may be made than by any other method. But to make it, the knowledge and long practical experience must exist; and thus it is that we rejoice that the reforms of the Court of Chancery will proceed from the profession itself. And this from no obscure member or isolated section of it; they will proceed from its most eminent judges, from its leading counsel, from its most intelligent solicitors. It is a most fortunate circumstance, indeed, for this country that the most eminent legal minds in this country are now devising the proper remedy; that the two great parties in the state are bidding against each other as to who shall do most for the suitor; and that both Houses of Parliament are ready and willing to pass whatever may be so proposed to them. It is also of immeasurable importance, that full power has already been granted by the legislature under the late act^a to the Judges to deal with the officers and machinery of the Court as they may see fit. This is now admitted by themselves. Their doom, so far as they do not contribute to the benefit of the suitor, is sealed. We would give them ample compensation—beds of down, and pillows of eider;—but let every existing office, whatever be its name—whether Master, Six Clerk, Sworn Clerk, Examiner, or Registrar,—be tried by the test of its use to the suitor: What does it do for him? Is it necessary to be done at all? if so, can it be done better?

With these few preliminary remarks, we for the present leave the subject, but we purpose to return to it, again and again, until we have laid before our readers, in a condensed form, all the existing information on the subject as already given to the public, with, as we trust, some additional information of our own, and in doing this we invite communications on the subject. We purpose never to abandon it until we have seen the just wishes of the profession and the public accomplished. We have already seen what may be done by the voice of the profession, once made known, and let us persevere and insist on being heard, and we have no fear of the result. And here we would say to some more timid members of the profession, who may fear that in the din and stir about to commence, their profits may suffer, that we are quite certain they are mistaken. If

any one fact is more clearly made out than another by the evidence before the House of Lords last session, it is that the public have lost their confidence in the Court of Chancery; that men now submit to almost any injustice where a small sum is involved, rather than apply to it at all for relief; that even when commenced, nine tenths of the whole^b number of suits are compromised, and that the present system is hardly less ruinous to the solicitor, who has his capital locked up, than the suitor. We trust we have always shewn ourselves to be the friends of the profession, and as such we say then, let us make the Court of Chancery a tribunal by means of which a small sum may be recovered, and where there is now one suitor we shall have ten. Let us have a machinery that can be recommended to poor and to rich, and which will speedily and cheaply adjust the rights of all, and we shall see whether the profession will lose by it. The best rule as to profit is "small gains, and many of them," to say nothing of any other satisfaction which would arise to the professional man. On this therefore, as on all other grounds, we heartily recommend our friends both in town and country, to prepare for great changes, to assist in them, to lay themselves out for them, and to leave nothing undone to effect them. On our part, we will devote ourselves to the cause, and give them as full and speedy information on the subject as we can.

PRACTICAL POINTS OF GENERAL INTEREST.

ASSIGNMENT OF DEBT.

By the strict rules of the common law, no *chase in action* could be assigned or granted over; but this nicety is now disregarded, though in compliance with the ancient principle, the form of assigning a *chase in action* is in the nature of a declaration of trust, and an agreement to permit the assignee to make use of the name of the assignor, in order to recover the possession, and therefore, where in common acceptance a debt is said to be assigned over, it must still be sued in the original creditor's name, and our Courts of Equity will protect the assignment of a *chase in action* as much as the law will that of a *chase in possession*. Stewart's Blackstone, vol. 2, p. 474. 2d edit. But to obtain the relief of a Court of Equity, the plaintiff must show that there

^a 3 & 4 Viet. c. 94.

^b Min. Ev. pp. 12 & 54.

is some legal bar existing which prevents his suing at law, and the assignee of a debt cannot sue in a Court of Equity, unless the assignor refuses to allow the assignee to sue for it at law in his name, or has done or intends to do some act which will prevent the assignee from recovering it at law in the assignor's name. This point, which is of considerable practical importance, was decided by the *Vice Chancellor* in the case of *Hammond v. Messenger*, 9 Sim. 327. "If this case (said his Honor) were stripped of all special circumstances, it would be simply a bill filed by a plaintiff who had obtained from certain persons to whom a debt was due, a right to sue in their names for the debt. It is quite new to me that in such a simple case as that, this Court allows, in the first instance, a bill to be filed against the debtor, by the person who has become the assignee of the debt. I admit, that, if special circumstances are stated, and it is represented that, notwithstanding the right which the party has obtained to sue in the name of the creditor, the creditor will interfere and prevent the exercise of that right, this Court will interpose for the purpose of preventing that species of wrong being done; and, if the creditor will not allow the matter to be tried at law in his name, this Court has a jurisdiction, in the first instance, to compel the debtor to pay the debt to the plaintiff; especially in a case where the act done by the creditor is done in collusion with the debtor. If bills of this kind were allowable, it is obvious that they would be pretty frequent; but I never remember any instance of such a bill as this being filed, unaccompanied by special circumstances. The only question then is, whether, on this record, there are any special circumstances which create a ground for a Court of Equity to entertain the bill against the debtor." His Honor then went through the special circumstances of the case, and then concluded his judgment. — "It seems to me that this case is altogether denuded of those special circumstances, the existence of which is the only ground for this Court to lend its aid to a party who, like the plaintiff, has taken an assignment of a debt, and, consequently, the demurrer must be allowed."

The assignee of a debt must first, therefore, sue at law, unless some obstruction be thrown in his way by the assignor.

THE BANKRUPTCY AND INSOLVENCY COMMISSION.

No. III.

WE now resume the consideration of the highly valuable and important report of this commission, and we shall give the commissioners' statement of the fiat, and mode of issuing it.

"Upon the first introduction of the bankrupt law, the whole jurisdiction was vested in the Lord Chancellor, and other great officers of state named in the statute. The jurisdiction was put in force upon complaint made in writing by any parties grieved. The legislature afterwards authorized the Lord Chancellor to appoint, by commission under the great seal, such discreet persons as to him should seem good, who, by virtue of the statute and of the commission, took order and direction with the body and property of the bankrupt, for the payment of the creditors. "The object of the commission was, to signify before whom the bankruptcy was to be prosecuted, the prosecution of a bankruptcy being considered as much *ex debito justitiæ* as a writ. Before issuing the commission however, a practice prevailed, that the party grieved, or, in other words, the petitioning creditor, should make an affidavit, that the bankrupt was indebted to him, and to other creditors, in the amount of 100*l.* Afterwards by the statute 5 Ann. and by subsequent statutes, in order, as therein recited, to prevent the taking out commissions of bankrupts maliciously, no commission of bankrupt could issue, unless upon the petition of a creditor to whom the trader owed a debt of a certain amount; and the petitioning creditor was required to make an affidavit of his debt, and give a bond to the Lord Chancellor in the penalty of 200*l.* conditioned for duly proceeding in the commission. Thus the law remained until the establishment of the Court of Bankruptcy, when, in lieu of the commission, the Lord Chancellor was empowered to issue his fiat authorizing the creditor to prosecute his complaint in the Court of Bankruptcy, or before such discreet persons as the Lord Chancellor might think fit to nominate. The fiat is still *de jure*, and upon making the affidavit, and giving the bond, the party obtains it as a matter of course. The right however, to prosecute a fiat is very much limited. The practice is as follows. The petitioning creditor, if in the country, makes an affidavit of his debt before a master extraordinary in Chancery, and executes a bond: both are sent to an agent in London. If the petitioning creditor reside in or within ten miles of London, he must make an affidavit of his debt before a master in Chancery, or a commissioner of the Court of Bankruptcy, and the bond must be executed at the bankrupt office. The bond

and affidavit are left at the bankrupt office for the purpose of preparing the fiat, an entry is made in what is called a docket book, and this is called striking the docket. The petitioning creditor is then allowed four days for ordering the fiat; he is further allowed fourteen days, if a London fiat, and twenty-eight days if a country fiat, to open it. During this period, no other creditor can take any proceeding for the purpose of compelling the distribution of the trader's property amongst his creditors. Sometimes there are several creditors ready to strike a docket; if they all attend at the same time, the right to the fiat is decided by drawing lots. A docket is often struck by a friendly creditor, for the purpose of delay, or to effect some fraudulent purpose. Very frequently a fiat is obtained, and held in *terror* over the trader, to extract from him something to the prejudice of the creditors in general. An affidavit or bond upon which a fiat is issued cannot be re-sworn or re-executed, for the purpose of rectifying an error in them,—a new docket must be struck. A misdescription in the name, residence, or trading of the bankrupt in a fiat, renders it supersedable. It may be further observed, with respect to the bond, that Lord Eldon was not in the habit of assigning it, and the reason he gave was, that assigning the bond would be conclusive at law against the defendant, without being more advantageous to the party injured, who might have a better remedy by action on the case. With regard to the affidavit, the provision in the act of parliament respecting this is merely directory; the affidavit was required by way of caution, to prevent commissions from being too hastily issued. As soon as the commission or fiat is issued, the affidavit is of no further use, it proves nothing; and the petitioning creditor must prove his debt, before the party can be adjudicated a bankrupt, in the same manner as if no previous affidavit had been made. There being now a permanent Court for the prosecution of bankruptcies in London, and our intention being to propose the extension of such Court to the country, and to have judges acting in different districts, we see no advantage in requiring the authority of the Lord Chancellor (through the medium of a fiat) for the prosecution of complaints in a Court established for the express purpose of receiving and hearing such complaints. It appears to us, therefore, that the affidavit, the bond, and the fiat, with the practice attending them, though originally introduced for a beneficial purpose, are now unnecessary and useless. We are of opinion that parties grieved should make their complaints direct to the Court; and that all matters within the jurisdiction of the Court should be prosecuted in such form as the Court may direct, before one or more of its judges acting in the district in which the party complained of resides, unless otherwise ordered by the Court.

Next as to the Adjudication of Bankruptcy.

"The proceeding to make a trader a bankrupt is on an *ex parte* hearing. Thus, a tra-

der may be adjudicated and advertised to the world as a bankrupt, without any previous intimation; his property may be immediately seized, his trade stopped, and he himself compelled to surrender, and to be examined as to his affairs, though he be in a situation to prove that he was not a debtor of the person prosecuting the fiat, or that he had not committed any act of bankruptcy, or had never been a trader within the meaning of the bankrupt law. The only remedy in such a case is by petition to the Court of Review, or by an action at law. Either of these, as compared with the proceeding by which an adjudication is obtained, is expensive and slow, whilst the trader may not only be ruined in credit, but, all his property being taken from him, he is without any pecuniary means of seeking redress, except what he may be able to obtain from friends. This state of the law requires some remedy, but we consider it to be essential to the interests of creditors, that the property of the alleged bankrupt should be secured in the first instance upon proof and adjudication of the bankruptcy. As, however, this proceeding is so summary, we are of opinion that, wherever the adjudication has been made *ex parte*, the alleged bankrupt, before he is advertised, should have a certain but a short time for contesting the adjudication before the tribunal which pronounced it, by a proceeding as summary as that by which the adjudication was obtained, and at as little expense as possible. Instead, therefore, of advertising the adjudication forthwith, as at present, we propose that a certain number of days should elapse before the same be advertised, but that a copy of the adjudication under the seal of the court should be forthwith served upon the bankrupt, or left at his last or most usual place of abode, or of trade, and that, upon the application of the bankrupt, within such limited time, a sitting should be appointed for hearing the petitioning creditor and his evidence in support of the adjudication, and the bankrupt and his evidence against it; and if upon hearing the parties and their evidence, it appear to the satisfaction of the Court, that any of the requisites are wanting to support such adjudication, the same should be reversed: that forthwith, or as soon as may be, after the expiration of the allowed time (if the adjudication be not then reversed, or under hearing for that purpose) or sooner, with the consent of the bankrupt, notice of such adjudication should be given in the gazette, and the sittings appointed for the bankrupt to surrender and conform. At present, a bankrupt, who has done no act amounting to acquiescence, may bring an action at any time against his assignees to try the validity of the fiat. So also a person claiming adversely to the assignees, if he has not admitted their title, may at any time bring an action against them, and dispute the validity of the fiat.

"The only provisions affecting actions by a bankrupt against his assignees are,—The 44th section, 6 Geo. 4, c. 16. which limits the time for actions to be brought to three months, if

brought for acts directed by the statute and done erroneously, but this section does not apply to acts done by virtue of the assignees' ownership of the estate of the bankrupt. The 90th section, 6 Geo. 4, c. 16, by which no proof is required, at the trial, of the petitioning creditor's debt, or of the trading, or act of bankruptcy, unless notice be given by the other party, that he intends to dispute some, and which of such matters. And the 17th section, 1 & 2 W. 4, c. 56, which, after a proceeding by the bankrupt to reverse the adjudication in manner pointed out by that section, makes the adjudication, or, if an issue were ordered, the verdict on such issue, if not set aside, conclusive evidence as against the bankrupt, the petitioning creditor, the assignees, and persons claiming under them, and persons indebted to the bankrupt's estate, that the party was, or was not a bankrupt at the date of the adjudication.

The only provisions affecting actions *against assignees by persons claiming adversely to them*, are,—the 44th section, 6 Geo. 4, c. 16, in certain cases before-mentioned. And the 90th section, 6 Geo. 4, c. 16, requiring notice of the plaintiff's intention to dispute the petitioning creditor's debt, trading, or act of bankruptcy as above stated.

Many instances have occurred, where actions have been brought to dispute the validity of bankruptcies, many years after the adjudication, and after the estates, or the bulk of them, have been divided, and where the witnesses to prove the requisites to support the bankruptcy could not be found. This is an evil which calls for a remedy. We, therefore, propose that if the bankrupt consent to the adjudication, or do not, within a certain period after notice of the adjudication, dispute the bankruptcy by appeal or by action at law, the adjudication should be conclusive against him, and also against all persons whom he himself might have sued, had he not been adjudged bankrupt. We further propose that, in actions at law, or suits in equity, against an assignee, no proof should be required at the trial, or hearing, of the petitioning creditor's debt, trading, or act of bankruptcy, unless the declaration be delivered or bill filed within a certain period after the cause of action accrue against such assignee, and notice also be given by the other party (as is now required by the 90th and 91st sections of the 5 Geo. 4, c. 16) of his intention to dispute some and which of such matters. Much evil has arisen from the doctrine, that an act of bankruptcy, once committed, may be made the foundation of a commission or fiat at any subsequent period, however remote, provided only that there be an antecedent debt due to the petitioning creditor. We therefore propose that no adjudication of bankruptcy shall be founded on any act committed more than twelve months before the date of such adjudication.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No. XXI.

NOTICE OF ELECTIONS.

3 & 4 Vict. c. 81.

An Act to define the Notices of Elections of Members to serve in Parliament for Cities, Towns, and Boroughs in England.

[7th August, 1840.]

1. *In cities, towns, &c. the sheriff or other officer shall proceed to election within eight days after receiving the writ, giving three clear days' notice.*—Whereas it is expedient to establish the same form of notice for elections of members to serve in parliament in all cities, towns, and boroughs in England: be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every city or town in England being a county of itself, and in every borough, town corporate, port, or place in England returning or contributing to return a member or members to serve in parliament, the sheriff or other officer to whom the duty of giving such notice belongs shall proceed to election within eight days after the receipt of the writ or precept, giving three clear days' notice at least of the day appointed for the election, exclusive of both the day of proclamation, and the day appointed for the election.

2. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

No. XXII.

ARREST ABOLITION ACT AMENDMENT.

3 & 4 Vict. c. 82.

An Act for further amending the act for abolishing Arrest on Mesne Process in civil Actions.

[7th August 1840.]

1 & 2 Vict. c. 110. *Provisions of recited act as to property of judgment debtors defined and extended*—Whereas by an act passed in the second year of the reign of her Majesty, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England," it was amongst other things enacted, that if any person against whom any judgment should have been entered up in any of her Majesty's superior courts at Westminster should have any government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it should be lawful for a judge of one of the superior Courts, on the application of any judgment creditor, to order that

such stock, funds, annuities, or shares, or such of them, or such part thereof respectively, as he should think fit, should stand charged with the payment of the amount for which judgment should have been so recovered, and interest thereon, and such order should entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings should be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order: and whereas doubts have been entertained whether the said provisions extend to the cases herein-after mentioned: Now therefore be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as aforesaid as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest, vested or contingent, in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities, or shares as aforesaid which now are or shall hereafter be standing in the name of the Accountant General of the Court of Chancery, or the Accountant General of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof in the same way as if the same had been standing in the name of a trustee of such judgment debtor: Provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the Accountant General of the Court of Chancery or the Accountant General of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

2. *No judgment, decree, &c. to affect real estate, until memorandum left with the Senior Master of the Common Pleas.*—And whereas it was by the said act further enacted, that no judgment of any of the Superior Courts of

Common Law at Westminster, nor any decree or order in any Court of Equity, nor any rule of a Court of Common Law, nor any order in bankruptcy or lunacy, should by virtue of the said act affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as therein mentioned should be left with the senior master of the Court of Common Pleas at Westminster: And whereas doubts have been entertained whether a purchaser, mortgagee, or creditor, having notice of any such judgment, decree, order, or rule as aforesaid, would not in equity be affected thereby, notwithstanding such a memorandum or minute of the same as in the said act is mentioned may not have been left with the senior master of the said Court of Common Pleas; be it therefore further declared and enacted, that no such judgment, decree, order or rule as aforesaid shall by virtue of the said act affect any lands, tenements, or hereditaments, at law or in equity, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as in the said act in that behalf mentioned shall have been left with the senior master of the said Court of Common Pleas at Westminster; any notice of any such judgment, decree, order, or rule to any such purchaser, mortgagee, or creditor in anywise notwithstanding.

No. XXIII.

USURY ON BILLS.

3 & 4 Vict. c. 83.

An act to continue, until the first day of January one thousand eight hundred and forty three, an act of the last session of Parliament, for amending and extending the provisions of an act of the first year of her present Majesty, for exempting certain bills of exchange and promissory notes from the operation of the laws relating to Usury. [7th August, 1840.]

2 & 3 Vict. c. 37. *Recited act continued until 1st Jan. 1843.*—Whereas an act was passed in the second and third years of her present Majesty, intituled "an act to amend and extend until the first day of January one thousand eight hundred and forty-two, the provisions of an act of the first year of her present Majesty, for exempting certain bills of exchange and promissory notes from the operation of the laws relating to usury:" And whereas the duration of the said recited act was limited to the first day of January one thousand eight hundred and forty-two, and it is expedient that the same should be continued for a longer period: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said recited act shall be continued until the first of January one thousand eight hundred and forty-three.

No. XXIV.

METROPOLITAN POLICE JUSTICES.

3 & 4 Vict. c. 84.

An Act for better defining the powers of justices within the Metropolitan Police District. [7th August 1840.]

2 & 3 Vict. c. 47. *Repeal of 2 & 3 Vict. c. 47, ss. 75, 76. Limiting number of magistrates.*—Whereas by an act passed in the last session of parliament, intituled “An act for further improving the police in and near the metropolis,” it is among other things enacted, that in the construction of that act the word “magistrate” shall be taken to include every justice of the peace acting in and for any part of the metropolitan police district for which no police court shall be established, and that if any offence against that act shall have been committed or the offender apprehended in any part of the metropolitan police district for which no police court shall be established as aforesaid, the matter of such complaint may be also heard and determined by any two or more justices acting in and for the county in which the offence was committed or the offender apprehended; and it is expedient that the meaning of these enactments be more clearly expressed, and that further provision be made for defining the divisions for which police courts are established within the metropolitan police district: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of the said act as is hereinbefore recited shall be repealed.

2. *Queen in council may constitute police court divisions, and define and alter their extent and number. Limiting number of magistrates.*—And be it enacted, That it shall be lawful for her Majesty, with the advice of her Privy Council, from time to time to constitute within the metropolitan police district so many police court divisions as to her Majesty shall seem fit, and to define the extent thereof, and from time to time to alter the number and extent of such police court divisions, and to assign a division to each of the police courts already established, and to establish a police court for each of the other divisions: provided always, that nothing in this act contained shall be construed to restrain the police magistrates appointed to the said courts from acting in all places within the limits of their commissions as fully in all respects as if this act had not been made; and be it further provided, that there shall not be more than twenty-seven magistrates appointed to execute the duties of justices of the peace at the said courts.

3. *So much of 2 & 3 Vict. c. 71, as requires the daily attendance of a police magistrate at the Courts to apply only to those Courts already established.*—And whereas by an act passed in the last session of parliament, intituled An act for regulating the police courts in the metropolis, it is provided that one of the magistrates appointed to the said courts shall attend on every

day (except as therein excepted) at each of the police courts established or to be established within the metropolitan police district: and whereas the business of a police court in the outer parts of the metropolitan police district will not require the daily attendance of one of the said magistrates; he it enacted, that so much of the last-recited act as requires the daily attendance of one of the said magistrates at each of the said courts shall be taken to apply only to the police courts now established in Bow-Street, and in the parishes of Saint Margeret Westminster, Saint James Westminster, Saint Mary-le-bone, Saint Andrew Holborn, Saint Leonard Shoreditch, Saint Mary Whitechapel, and Saint John of Wapping, in the county of Middlesex, and Saint Saviour in the county of Surrey, and shall continue to apply to the said courts, where-soever they may from time to time be holden or removed to within the metropolitan police district.

4. *Police magistrates may be ordered to attend at other courts.*—And be it enacted, that it shall be lawful for her Majesty, if she shall think fit, with the advice of her privy council, to order that a police magistrate or magistrates shall attend regularly at any police court or courts hereafter to be established, either daily or on such days and times as her Majesty, by the advice aforesaid, shall order; and it shall be lawful for her Majesty, from time to time, with the advice aforesaid, to alter or rescind any such order.

5. *Orders in council to be published in the Gazette.*—And be it enacted, that every order in council, either for constituting or altering a police court division, or for assigning a division to the police courts already established, or for establishing or removing a police court, or for ordering the regular attendance of a police magistrate or magistrates at any police court or courts, or for altering or rescinding any such order, shall be published in the London Gazette, and shall take effect from the time appointed far that purpose by the said order.

6. *Any two justices may act with the authority of a police magistrate. Proviso.*—And be it enacted, that any two justices of the peace having jurisdiction within the metropolitan police district shall have, while sitting together publicly in the court or room used for holding special or petty sessions of the peace in any part of the said district within the limits of their commission, except in the divisions to be assigned to the police courts already established, and any two justices of the peace for the city of London and the liberties thereof, having jurisdiction within the city of London and the liberties thereof, shall within the said city of London and the liberties thereof, have all the powers, privileges and duties which any one magistrate of the said police courts has while sitting in one of the said courts by the two recited acts of the last session of parliament or either of them: provided always, that whenever a new police court shall have been established within the metropolitan police district, and a division assigned to such court as aforesaid,

such justices shall not act in that division, in the execution of the two said acts or either of them, elsewhere than at such court; and that at every police court at which the regular attendance of a police magistrate shall have been ordered by her Majesty as herein-before provided, the police magistrate while present in such court shall act as the sole magistrate thereof.

7. *Application of recited act as to the employment of clerks.*—And be it enacted, that so much of the last-recited act as provides that no clerk in any of the police courts shall hold or have any other office or employment whatsoever, except as therein excepted, shall be taken to apply only to the police courts now established.

8. *Form of recognizance, information, and conviction.*—And be it declared and enacted, that every recognizance taken at any station house of the metropolitan police force, situated in a division in which a police magistrate is not in daily attendance shall be conditioned for the appearance of the person thereby bound before the magistrate or the justices acting in the division, at his or their next sitting; and every such recognizance shall be returned to the magistrate or justices present at the time and place where the party is bound to appear; and when the information is laid or the conviction had before two justices, the forms given in the schedule annexed to this act may be used instead of the forms of information and conviction provided by the last recited act.

9. *Extension of power to enlarge prisoners on recognizance.*—And be it enacted, that whenever any person shall be charged before any police magistrate or before any two justices, at any police court within the metropolitan police district, with any felony or misdemeanor for which he is liable to be committed to take his trial at the assizes to be holden for any of the counties of Essex, Hertford, Kent, or Surrey, it shall be lawful for such police magistrate or for such justices, if he or they respectively shall think fit, to suffer such person to go at large upon a recognizance conditioned for surrendering himself to take his trial at such assizes, in like manner as such recognizance may be taken for his surrender to take his trial at the central criminal court, in cases where he is liable to be committed for trial at the central criminal court; and every such recognizance shall be within all the provisions of the last recited act relating to recognizances for surrendering to be tried at the central criminal court.

10. *Militia balloting lists to be made out by police constables.* 42 G. 3. c. 90.—And be it enacted, that after the passing of this act all proceedings within the metropolitan police district relating to the serving of notices, and the procuring and making out of the returns of the persons liable to serve in the militia, and the preparing and making out of the lists of the persons liable to be ballotted for the militia, and all other things, by an act passed in the forty-second year of the reign of King George the third, intituled "an act for amending the laws relating to the militia in England, and for augmenting

the militia," or by any other act relating to the militia, directed to be done by the high and other constables for the time being, shall be done within the said district by the constables of the metropolitan police force, or by such of them as shall be from time to time specially appointed for that purpose by the commissioners of police.

11. *Penalty for obtaining money by threatening information.*—And be it enacted, that any person who shall obtain any sum of money or other reward from any person within the metropolitan police district by threatening directly or indirectly, to lodge any information or make any complaint before any magistrate, justice or justices, for any misdemeanor, or as an inducement for forbearing to lay such information or make such complaint, shall, on conviction of the offence before one of the police magistrates, or before any two justices of the peace, either by his own confession or by the oath of any credible witness, be liable to a penalty not more than ten pounds.

12. *Appeal to the police magistrates from proceedings at the leet concerning weights and measures.*—And be it enacted, that all persons who may think themselves aggrieved by any presentment or proceeding of any leet jury or court leet for any hundred or manor within the metropolitan police district, or of any person or persons appointed at any such court leet, with respect to examining or regulating, seizing, breaking, or destroying, any weights, balances, or measures, may within fourteen days next after such presentment or proceeding, appeal to any one of the magistrates of the metropolitan police courts, first giving seven days' notice in writing of such intention to appeal, and of the grounds and nature thereof, to the steward of the court, or to such other party against whom the complaint is intended to be made, and forthwith after such notice entering into a recognizance before one of the said magistrates, conditioned to try the appeal, and abide the order and award of the court thereon: and the magistrate attending at the court to which the appeal shall be brought shall appoint a time for the hearing of such appeal, and the magistrate by whom the appeal shall be heard may, if he see cause, mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such presentment or proceeding, and also any further satisfaction to be made to the party injured as he shall judge reasonable, and also costs to be paid to the party aggrieved, the said satisfaction and costs to be paid by the steward of the said court out of the first monies coming to his hands, being the produce of any fines imposed by the leet jury; and it shall not be lawful to distrain or proceed in any manner for the recovery of any fine or amercement imposed by any such court leet, or assessed by any such jury, against which notice of such appeal shall have been given, until after the judgment or order of the magistrate upon the appeal, and then only for so much as shall be allowed upon such appeal.

13. *Giving possession of deserted premises.*

11 G. 2, c. 19. 57 G. 3. c. 52. 2 & 3 Vict. c. 47.—And be it enacted, that after the passing of this act none of the police magistrates within the metropolitan police district shall be required to go upon any deserted lands, tenements, or hereditaments, for the purpose of viewing the same or affixing any notices thereon, or of putting the landlord or landlords, lessor or lessors into the possession thereof, under the provisions of an act passed in the eleventh year of the reign of king George the Second, intituled “An act for the more effectual securing the payment of rents, and preventing frauds by tenants,” or of an act passed in the fifty-seventh year of the reign of King George the Third, for altering the last-recited act, but that in every case within the metropolitan police district, in which by the said acts or either of them two justices are authorized to put the landlord or lessor into the possession of such deserted premises, it shall be lawful for one of the police magistrates, upon the request of the lessor or landlord, or his or her bailiff or receiver, made in open court, and upon proof given to the satisfaction of such magistrate of the arrear of rent and desertion of the premises by the tenant as aforesaid, to issue his warrant, directed to one of the constables of the metropolitan police force, requiring him to go upon and view the premises, and to affix thereon the like notices as under the said acts or either of them are required to be affixed by two justices of the peace; and upon the return of the warrant, and upon proof being given to the satisfaction of the magistrate before whom the warrant shall be returned that it has been duly executed, and that neither the tenant nor any person on his or her behalf has appeared and paid the rent in arrear, and that there is not sufficient distress upon the premises, it shall be lawful for such magistrate to issue his warrant to a constable of the metropolitan police force, requiring him to put the landlord or lessor into the possession of the premises; and every constable to whom any such warrant shall be directed shall duly execute and return the same, subject to the provisions contained in an act passed in the last session of parliament, intituled “an act for further improving the police in and near the metropolis,” as to the execution of warrants directed to constables of the metropolitan police force; and upon the execution of such second warrant the lease of the premises to such tenant, as to any demise therein contained only, shall thenceforth be void.

14. *Horse and foot patrol and Thames police declared within the provision for superannuation allowances.* 2 & 3 Vict. c. 47.—And be it declared and enacted, that the men belonging to the horse and foot patrol formerly acting under the authority of the chief magistrate of the public office in Bow Street, or to the Thames police, but not belonging to the metropolitan police force, shall be entitled, when completely disabled by bodily injury or worn out by length of service, to receive such superannuation allowances as shall be directed by one of her Majesty's principal secretaries of state, which allowances shall be paid out of the sums which by an act

passed in the last session of parliament, intituled “an act for further improving the police in and near the metropolis,” are authorized to be issued out of the consolidated fund for the payment of superannuation allowances to the surveyors and constables therein specified.

15. *London justices to have same powers as metropolitan justices.*—And be it enacted, that any two justices of the peace for the city of London and the liberties thereof, having jurisdiction within the city of London and the liberties thereof, shall, within the said city of London and the liberties thereof, have all the powers, privileges, and duties which any two justices of the peace having jurisdiction within the metropolitan police district have within the metropolitan police district by virtue of this act.

16. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

SCHEDULE.

Form of Information.

Metropolitan Police District to wit. } Be it remembered, that *A. B.* of in the cometh on the day of in the year of our Lord before us, *J. P.* and *K. L.*, two of her Majesty's justices of the peace for the of sitting at the police court [or at the petty sessions court, as the case may be,] at within the metropolitan police district, and giveth us to understand and be informed that *C. D.* hath been guilty of [here describe the offence.]

Form of Conviction.

Metropolitan Police District to wit. } Be it remembered, that on the day of in the year of our Lord, *C. D.* is brought before us, *J. P.* and *K. L.*, two of her Majesty's justices of the peace for the of sitting at the police court [or at the petty sessions court, as the case may be,] at within the metropolitan police district, and is charged before us with having [here describe the offence]; and it appearing to us, on the confession of the said *C. D.* [or upon the oath of a credible witness, as the case may be,] that the said *C. D.* is guilty of the said offence, we do hereby adjudge the said *C. D.* [here insert the Adjudication]. Given under our hands on the day and year first mentioned.

SUGGESTED IMPROVEMENTS IN THE LAW.

COURT OF EXCHEQUER CHAMBER.

I AM not aware, that attention has been called to a very serious defect in the constitution of the Court of Exchequer Chamber, as fixed by stat. 11 Geo. 4, and 1 Will. 4, c. 70, s. 8; by which act a writ of error upon a judgment of the Q. B., C. P., or Exch., is “made returnable only before the judges, or judges and ba-

rons, as the case may be, of the *two other Courts*, in the Exchequer Chamber."

The consequence of this enactment is, (and similar objections existed under the former system,) that a judgment of one of those Courts may be reversed by the Exchequer Chamber, *notwithstanding that the majority of, (the whole of,) the judges giving judgment in the cause may support the original decision.*

The case of *Doe d. Spilbury v. Burdett*, is a forcible illustration of this. In that case the four judges of the Court of Q. B. gave an *unanimous judgment for the defendants*, (M. T. 1835, 4 Ad. & Ell. 1.) The cause was afterwards removed into the Exchequer Chamber, and, the majority (four,) of the seven judges who composed that Court, being of opinion that the judgment of the Court below was erroneous, such judgment was reversed, although *the three remaining judges sitting in Cam. Scacc. concurred in the opinion of the Q. B.*, and thought that the original judgment ought to be affirmed. (H. T. 1839; 9 Ad. & Ell. 936.) The plaintiff therefore recovered judgment by the opinion of judgment, by the *opinion of four judges against seven!*^a

As a judgment in ejectment is no bar to a fresh action, the defendant in such a case might be enabled to procure a contrary decision of the Exchequer Chamber, by bringing such action in the C. P., and failing there, suing out a new writ of error, by which means the judges of the Q. B. would become the judges of appeal jointly with those of the Exchequer!

I would suggest, whether the evil in question might not be safely, as well as effectually, removed by making the appeal (as in criminal cases) to the judges of all the Courts; or by reckoning the opinions of the judges of the Court below, in ascertaining the majority?

The question is rendered of greater importance, by the case of *Nesbit v. Rishton*, 9 Ad. & Ell. 426. (*Seemle*, over-ruling *Ricketts v. Lewis*, 2 C. & J. 11,) wherein it was held that the present Court of Exch. Chamb., (unlike the old one) may sit on appeal from judgments of the Q. B. in causes removed from *Inferior Courts*.

A STUDENT.

INCORPORATED LAW SOCIETY.

LECTURES, 1840-41.

THE usual lectures of this Society will be delivered in the hall in and after Michaelmas and Hilary Terms, on Monday and Friday evenings, at 8 o'clock precisely, viz.

The *Conveyancing* lectures will be continued by S. F. T. Wilde, Esq. on the *Principles and Practice of Conveyancing*. The object of this

^a Until within the last ten years, the Q. B. was the Court of Appeal from the C. P. But now an unanimous decision of the Q. B. may be over-ruled by the C. P., and one baron of the Exchequer; although the other barons concur with the Q. B.

course will be to notice the points which should principally be attended to by solicitors in preparing abstracts of title preparatory to the sale of property, and those to which they should chiefly direct their attention in investigating a title and completing a purchase.

An opportunity will be taken to explain the present state of the law with respect to property settled to the separate use of married women, and the extent of their power of disposition over property so settled.

In the *Equity and Bankruptcy* lectures, by S. H. Walpole, Esq., the consideration of *implied, constructive, and resulting Trusts*, including the *Doctrines of Elections and Satisfaction* will be resumed: and, at the latter part of the course, it is intended to examine the peculiar remedies, which can only be obtained in a Court of Equity, by granting of *Injunctions* and the appointment of *Receivers*.

In the *Bankruptcy* lectures, it is proposed to consider the different kinds of property distributable under the fiat, and the effect of the allowance of the bankrupt's certificate. The bankruptcy lectures will probably be delivered either immediately before, or immediately after Christmas.

The *Common Law and Criminal Law* lectures, by J. W. Smith, Esq. will comprise the chief points relative to Commercial Law.

The subjects first treated of will be,—The *Law of Debtor and Creditor*, and *Insurance*.

The lectures on *Criminal Law* will be delivered at the conclusion of the course, and due notice will be previously given of the subject, and of the evenings to be appropriated to them.

The terms of subscription are stated in the advertisement.

THE STUDENT'S CORNER.

DISTRIBUTION OF INTESTATE'S ESTATE.

A PERSON died intestate, possessed of considerable personal estate, leaving a mother, brother, sister, and nine children of a deceased brother, surviving him. His property, according to the statute for the distribution of the personal estate of intestates, would be divided into four parts, of which the mother, brother and sister, would each have one, and the remaining one would of course go to the children of the deceased brother. Now, as the intestate's nephews and nieces are all under age, I wish to ascertain when the part belonging to them must be paid,—whether to each of them as they attain the age of twenty-one years, or must the administrator wait till all of them have attained that age. G. S.

THE LEGALITY OF PURCHASING NEXT PRESENTATIONS.

Although purchases of next presentations are very general, and no notice as to the validity of such contracts is taken, notwithstand-

ing the prohibitory clauses of the statutes of 31 Eliz. c. 6, and 12 Ann. st. 2, c. 12, I cannot help being of opinion, that such purchases (unless there has been some recent enabling statute, and partially repealing the statutes of Eliz. and Ann.) are simoniacal, and that all presentations founded on such contracts are liable to be set aside in favor, for that turn, of the crown presentee.

You may perhaps be able to inform me, through the medium of your periodical, whether any *and what*, if any, act has been passed of late years enabling parties to sell, and to buy, either for themselves or others, the next presentation to an ecclesiastical benefice. And if there has no such act passed, what construction the authorities put upon the statutes of Eliz. & Ann.

C.

[THE 9 Geo. 4, c. 94, enacts, that contracts for the resignation of a benefice in favor of one person, to be named in such contract, or in favor of two persons, where one of them is a son, brother, grandson, uncle, nephew or grand nephew, shall be valid, if the deed be deposited in six months with the registrar of the diocese. ED.]

FEES AND STAMPS ON THE EXAMINATION AND ADMISSION OF ATTORNEYS.

We have been requested by several correspondents to state the fees and stamp duties payable on the examination and admission of attorneys. They are we believe as follow:—

	£ s. d.
On leaving papers as to due service at the Law Society	0 5 0
On the examination and for certificate	0 15 6
For the Judge's fiat	0 10 6
For the oath in Court	0 1 0
To the usher on signing roll	0 5 0
To the Master's clerk for certificate..	0 5 0
For stamps for two affidavits of payment of duty on articles, and of service of clerkship and notice of admission	0 5 4
For swearing affidavits and exhibits..	0 8 0
For taking affidavit of execution of articles from the file at the Master's office	0 5 0
Fees of admission in Chancery	1 17 0
Fees of admission in Bankruptcy....	0 6 0
Fees for commission to take affidavits in each Court	1 15 0
Fees on being made a master extraordinary in Chancery	8 13 0
Admission stamp	25 0 0

LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC,
AND TO BE JUDICIALLY NOTICED.

[Concluded from p. 415.]

—
3 & 4 Vict.

- CAP. 100.—An act for repairing, improving, and maintaining the road from Bedford to Woburn, with a branch therefrom, all in the county of Bedford.
- CAP. 101.—An act to make, alter, improve, and maintain certain roads in the counties of Stirling, Dumbarton, Lanark, and Perth.
- CAP. 102.—An act for making and maintaining certain turnpike roads in the stewartry of Kirkcudbright, and the other highways, bridges, and ferries therein, and for more effectually converting into money the statute labour in the said stewartry.
- CAP. 103.—An act to alter and amend certain acts for making and maintaining a road from the limits of the counties of Edinburgh and Lanark, by Wilsontown into the Burgh of Lanark, with a branch towards Ravenstruther in the said county of Lanark; and for other purposes relating thereto.
- CAP. 104.—An act for separating the management of the Ardrossan and Johnston Railway from the management of the Glasgow, Paisley, and Johnston Canal; for incorporating the proprietors thereof; for doubling and improving the said railway; and for other purposes relating thereto.
- CAP. 105.—An act to amend and enlarge some of the provisions of the act relating to the Birmingham, Bristol and Thames Junction railway; and to authorize the company to raise a further sum of money for the purposes of the said undertaking.
- CAP. 106.—An act to alter and amend the acts passed for making a railway from Dublin to Drogheda.
- CAP. 107.—An act to amend and enlarge the powers and provisions of the act relating to the Glasgow, Paisley and Greenock Railway, and to make certain new branch railways from the main line in the towns of Greenock and Port Glasgow, and to make other works in connexion with the said railway.
- CAP. 108.—An act to amend the acts relating to the Edinburgh and Glasgow Railway.
- CAP. 109.—An act to enable the Hartlepool Dock and Railway Company to raise a further sum of money, for completing their undertaking; and enlarging the time for completing the same; and for amending the acts relating thereto.
- CAP. 110.—An act to amend the acts relating to the Taff-Vale railway.
- CAP. 111.—An act for erecting and maintaining a pier and other works in Mill Bay, in the port of Plymouth, in the county of Devon.
- CAP. 112.—An act for opening a street to Clerkenwell Green, in the county of Middle-

- sex, in continuation of the new street from Farringdon-street, in the city of London.
- CAP. 113.—An act for better supplying with water the town and borough of Deal, and the neighbourhood thereof, in the county of Kent.
- CAP. 114.—An act for regulating the municipal government and expences of the Royal Burgh of Banff, North Britain; for establishing an effective police within the same; and also for maintaining, improving, and regulating the harbour of the said Royal Burgh.
- CAP. 115.—An act for forming and establishing a company, to be called the General Salvage Company, and for enabling the said company to purchase certain letters patent.
- CAP. 116.—An act for improving the roads leading from Newcastle-under-Lyme, to Blyth Marsh, from Cliff Bank to Shelton, from Fenton to Hem Heath, and from Shelton to Newcastle-under-Lyme; and for making and completing certain new pieces of road to communicate therewith; all in the county of Stafford.
- CAP. 117.—An act to alter and amend an act passed in the third year of the reign of his Majesty King George the Fourth, and the acts therein recited, so far as the same relate to the road to Provan mill, commonly called the Garngad road; and for other purposes relating thereto.
- CAP. 118.—An act for farther deepening and improving the river Clyde, and enlarging the harbour of Glasgow, and for constructing a wet dock in connexion with the said river and harbour.
- CAP. 119.—An act for regulating, preserving, and maintaining the river, port and harbour of Dundalk, in the county of Louth, in Ireland.
- CAP. 120.—An act for regulating certain intended docks at Liverpool to be called the Herculaneum Docks, and exempting vessels frequenting the same, and their cargoes, from a portion of the tolls and duties payable to the trustees of the Liverpool docks.
- CAP. 121.—An act to enable the Harrington Dock Company to sue and be sued in the name of any member or officer of the said company; and to exempt all vessels using the docks belonging to the said company, and all goods shipped or discharged therein, or on the estate of the said company, from the payment of certain rates, tolls, or duties to the trustees of the Liverpool Docks.
- CAP. 122.—An act to alter, amend, and enlarge the powers and provisions of an act for removing the markets held in the High and Fore-street, and other places within the city of Exeter, and for providing other markets in lieu thereof.
- CAP. 123.—An act for establishing an improved ferry between the western part of the parish of Erskine, in the county of Renfrew, and Dumbarton, in the county of Dumbarton.
- CAP. 124.—An act to authorize the trustees of the river Weaver in the county of Chester to apply part of the funds arising from the rates and duties payable in respect of the navigation of the said river for the erecting and endowing one or more church or churches for the accommodation of the watermen, hawlers, and others employed upon the said river and connected with the traffic thereof.
- CAP. 125.—An act to amend and render more effectual, so far as relates to the Lord Scudamore's charity monies, the provisions of an act passed in the fourteenth year of the reign of his Majesty King George the Third, for improving the city of Hereford, and for other purposes connected with the said city.
- CAP. 126.—An act to enable the Monmouthshire Iron and Coal Company, to sue and be sued in the name of any one of their directors or their secretary, and to raise money for carrying on their works.
- CAP. 127.—An act to amend and enlarge the powers and provisions of the several acts relating to the London and Greenwich railway.
- CAP. 128.—An act to enable the London and Greenwich Railway Company, to provide a station in the parish of Saint Olave in the borough of Southwark, and county of Surrey.
- CAP. 129.—An act to enable the London and Croydon Railway Company to provide additional station-room at the terminus of the London and Greenwich railway, in the parish of Saint Olave, and for other purposes relating thereto.
- CAP. 130.—An act for granting further powers to the Midland Counties Railway Company.
- CAP. 131.—An act to continue for four years, from the fifth day of July, one thousand eight hundred and fifty-eight, the duties now levied on coal and wines imported into the port of London.

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—RE-EXAMINATION OF WITNESSES. —COSTS.

If, on perusing the depositions of witnesses examined in a cause, it should clearly appear that the Examiner has mistaken the evidence given by any witness, or has conveyed a meaning different to that which the witness intended, and the witness proves by affidavit this to have been the case, the Court will permit a re-examination of the witnesses for the purpose of correcting the mistake, but will not suppress the deposition.

On the publication of the evidence in this cause, it was discovered that the evidence of three of the witnesses who had been examined was not only materially different to that which it was alleged they had given, but that some

material portions of it had been altogether omitted. A motion was, therefore, now made to have the depositions which had been given out amended, or the depositions suppressed, and the witnesses re-examined.

K. Bruce and Shelbeare, for the plaintiffs, after reading the passages in the depositions, and comparing them with the statements in the affidavits, for the purpose of shewing the great and manifest discrepancy between the evidence actually taken down with that intended to be given, urged that this was palpably an error on the part of the Examiner, and came therefore within the rule universally adopted by the Court of allowing to be set right any impropriety or imperfection which clearly appears to have arisen from mistake or inadvertence. *Kirk v. Kirk*, 13 Ves. 280; *Hood v. Pinnar*, 4 Sim. 101. The plaintiffs did not wish to introduce any new facts, or to make out a case different from that which appeared upon their bill; but both the witnesses who had been examined and the solicitor having sworn that the evidence as taken down by the Examiner was imperfect and incomplete, it would be a manifest injustice to the plaintiffs to compel them to proceed to a hearing without having the opportunity of presenting their case to the Court with the advantage of clear and consistent testimony.

Roupell, for the defendant, insisted that as to two of the parties, at least, the application ought not to be granted. With regard to Portington, the affidavit states that he did give the evidence required to be added, and that it was not taken down by the Examiner. There is not, therefore, the same objection to the addition required in his evidence, as to that sought to be made in the depositions of the other two, neither of whom had ventured, in the affidavit sworn by them, to bring the omissions complained of in their depositions up to this point; but, on the contrary, it was evident that their object was to introduce new facts materially different from the statement made by them at the time of their examination. It was worthy of observation, that all these witnesses had been cross-examined, so that it was extremely probable their recollection would have suggested any omission on their previous examination, and yet affidavits were now made by three different witnesses, not from their own unbiassed judgment, but prompted by a solicitor, complaining, one after the other, that their evidence had not been properly taken down. As to Davis, it was clear the evidence taken down by the Examiner was perfectly consistent with what he professed to know, but he wishes to add something from which a different inference may be drawn; and with regard to Lloyd he was a marksman; the evidence given by him related to a question of pedigree, requiring the utmost nicety of examination, and concerning which it would be extremely dangerous to permit him to be re-examined, after having had his attention directed to the sort of evidence required by the plaintiffs to make out their case. The terms of the notice of

motion also were that the depositions might be suppressed, which was never allowed by the Court; *Kirk v. Kirk*, 13 Ves. 285; the only re-examination permitted after publication being for the purpose of correcting any particular mistakes.

Shelbeare, in reply.—It was immaterial whether the mistake arose from the Examiner having incorrectly taken down the evidence, or from the witness having inadvertently misstated it. *Griello v. Gansell*, 2 P. Wms. 646.

The Vice Chancellor, after referring to the notice of motion, said that it was in the alternative, either that the evidence might be amended, or the depositions suppressed and the witnesses re-examined. Undoubtedly the proper course is to have the depositions amended by correcting the particular mistake complained of; but even to do this there must be the clearest evidence of mistake, for the court was always extremely jealous in permitting any alteration in the depositions after publication had passed. Now, in this case, it was clearly proved by Portington that the Examiner had omitted to take down what he had actually stated, and therefore this defect must be supplied. With respect to Lloyd, he also thought it was evident that he had committed a mistake; no doubt he was overwhelmed by the multiplicity of formal words, and had thus become confused; and the same might be said of the first part of Davis's statement, but as to the latter part, it did not appear sufficiently clear from his affidavit that he intended to make the statement sought to be introduced, and he would therefore grant the application, except as to that part of Davis's statement to which he had just alluded.

Roupell having asked for the costs of opposing the motion,

The Vice Chancellor ordered them to be paid by the plaintiffs, observing that he remembered hearing Lord Eldon say that parties ought to pay for the mistakes of the Court. If witnesses were not sharp enough to see that their evidence was taken down correctly the parties calling them must suffer for their inaccuracies.

Lloyd v. Waite, August 3, 1840.*

Exchequer of Pleas.

PLEAS.—DOUBLE.—GENERAL ISSUE.—
ARGUMENTATIVE.

In the declaration the plaintiff alleged the issuing of a testatum fi. fa. which was lodged with the defendant for execution, and that the defendant seized the goods of one W. under the said writ, and remained in possession of the same for a long space of time,

* Our readers, we have little doubt, will agree with us in thinking that this case affords a strong exemplification of the necessity of *vivâ voce* examinations in the Court of Chancery. ED.

without selling them, when he returned, that he had taken the goods, and that they remained in his hands for want of buyers: Pleas, that the defendant did not seize the goods of W., or remain in possession under the writ; that the defendant could not, during the time mentioned, have sold the goods; and that the goods were vested in the official assignee of the estate of W., by virtue of a fiat in bankruptcy.

Held, that the first plea was bad for duplicity; that the second was bad as amounting to the general issue; and that the third plea was an argumentative denial that the goods seized were the goods of W.

This was an action on the case, brought against the defendant, as an officer of the sheriff for the county of Bedford. The declaration alleged a judgment recovered in the Court of Exchequer against one Richard Waring, for a certain debt adjudged to the plaintiffs, and that the said judgment being in full force, and the debt and damages remaining unsatisfied, the plaintiffs on the 30th April sued out a writ of *testatum f. fa.*, directed to the sheriff of Bedfordshire, commanding him &c., which writ was indorsed to levy 47l. 18s. 6d., and was before the return thereof, to wit, &c., delivered to the defendant, who then, and from thence was sheriff of the said county of Bedford, to be executed in due form of law. It then alleged a seizure of the goods of Richard Waring, before the return of the writ, within the bailiwick, and that the defendant remaining in possession of the said goods for a long space of time, the money indorsed to be levied remaining unpaid; that the defendant might have sold the goods, but that intending to deprive the plaintiffs of the money indorsed and directed to be levied, wilfully neglected the execution of his office, and wrongfully and without the consent of the plaintiffs or either of them, forbore to sell, &c. from the said 30th April until 17th May next following, when he the defendant returned to the said writ, &c., that he had taken goods and chattels of the said R. Waring, to the value of the debt and damages, and interest, &c.; and the defendant, by the said return, falsely and deceitfully further returned that the goods remained in his hands for want of buyers; by means whereof the plaintiffs were deprived of the benefit of the said writ.

Pleas: first, that the defendant did not seize or take in execution any goods or chattels of the said R. Waring, or remain or continue in possession thereof, by virtue of the said writ for the said space of time in the declaration mentioned, or any part thereof, *modo et formâ*.

Secondly, that the defendant could not, nor might, nor ought, during any part of the time in the said declaration &c. mentioned, to have sold the said goods and chattels &c., or any part thereof, under or by virtue of the said writ, or to have raised thereout the money indorsed on the said writ &c. ready to have been paid to the said plaintiffs within the space of time &c., *modo et formâ*.

Thirdly, that long before the delivery of the said writ of *testatum f. fa.* to the defendant to be executed &c., to wit, &c., and from thence continually until the issuing of the fiat of bankruptcy hereinafter mentioned, the said Richard Waring was a grocer, dealer and chapman, and exercised the trade of a grocer, and was a trader within and subject to the provisions of the statute passed in the 6th year of the reign of his late Majesty king George the 4th, intituled, "An Act to amend the Laws relating to Bankruptcy." The plea then went on to allege a fiat in bankruptcy issued against the said Richard Waring, by which the goods vested in the official assignee.

Special demurrer, assigning for causes that the first plea was double, in denying any taking in execution, and also in denying any continuance in possession by the defendant for a time in which he ought to have sold, and also that the defendant is estopped from denying the matters denied in the second plea; that the second plea was argumentative and amounted to the general issue; that the third plea was also argumentative, indirectly denying that the defendant seized any goods of Waring.

Bramwell, in support of the demurrer.—The first plea was bad for duplicity; it denied the seizure, and it also denied that the defendant remained in possession by virtue of the writ. [Lord Abinger, C. B.—If he did not seize, he could not have continued in possession.] But it did not follow that if he did seize, he therefore remained in possession; a plea containing two allegations, either of which in the absence of the other would of itself constitute an answer, was double. The apparent object of the plea was to allege that by reason of the bankruptcy, the continuance in possession of the defendant was illegal. It was impossible on reading the plea to know what it admitted or what it denied. It should have denied the seizure, or admitting that, it should have alleged that it was not by virtue of the writ. It was a negative pregnant. [Lord Abinger, C. B.—There is another objection: How can he deny that he seized in the face of his return, which appears on the declaration?] He was about to proceed to the second plea, when [Alderson, B.—The second plea clearly amounts to the general issue; it denies the breach of duty complained of.] The third plea was an argumentative denial that the goods were the goods of Waring. *Wright v. Lainson*, 3 M. & W. 44, was in point. It was not a plea in confession and avoidance. It was also open to the objection that it was contrary to the return. He was then stopped by the Court.

Gunning, contra, referred to *Lewis v. Alcock*, 6 D. P. C. 389; 3 M. & W. 188; and contended that the third plea was in confession and avoidance.

Sed per Curiam.—The defendant had better amend.

Amendment accordingly.—*Rowe and another v. Ames*, T. T. 1840. Exch.

CHANCERY SITTINGS,

Michaelmas Term, 1840

Before the Lord Chancellor.

AT WESTMINSTER.

Monday .. Nov. 2	{ Appeal Motions and Appeals.
Tuesday	3 Petition Day.
Wednesday....	4
Thursday	5
Friday	6
Saturday	7
Monday	9
Tuesday	10
Wednesday....	11
Thursday	12 Appeal Motions & Ditto.
Friday	13
Saturday	14
Monday	16
Tuesday	17
Wednesday....	18
Thursday	19 Appeal Motions & Ditto.
Friday	20
Saturday	21
Monday	23
Tuesday	24
Wednesday....	25 Appeal Motions & Ditto.

Before the Vice Chancellor.

AT WESTMINSTER.

Monday .. Nov. 2	Motions.
Tuesday	3 Petition Day.
Wednesday....	4
Thursday	5
Friday	6
Saturday	7
Monday	9
Tuesday	10
Wednesday....	11
Thursday	12 Motions.
Friday	13
Saturday	14
Monday	16
Tuesday	17
Wednesday....	18
Thursday	19 Motions.
Friday	20
Saturday	21
Monday	23
Tuesday	24
Wednesday....	25 Motions.

Before the Master of the Rolls.

AT WESTMINSTER.

Monday .. Nov. 2	Motions.
Tuesday	3 Petitions in General Paper.
Wednesday....	4
Thursday	5
Friday	6
Saturday	7
Monday	9
Tuesday	10
Wednesday....	11
Thursday	12 Motions.
Friday	13
Saturday	14
Monday	16
Tuesday	17
Wednesday....	18
Thursday	19 Motions.
Friday	20
Saturday	21
Monday	23
Tuesday	24
Wednesday....	25

AT THE ROLLS.

Thursday Nov. 26	{ Short Causes after swearing in the Solicitors.
Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.	

COMMON LAW SITTINGS,

In and after Michaelmas Term, 1840.

Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
Tuesday ... Nov. 3	
Friday	6
Monday	23
Thursday Nov. 26	Tuesday ... Nov. 24

After Term.

Thursday Nov. 26	Friday Nov. 27
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(to adjourn only.)

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 3d and 6th of November to the 26th; and all other Causes on the Lists for the 3d and 6th of November, will be taken from day to day until they are tried.

Undefended Causes only will be taken on the 23d of November.

Short Defended as well as Undefended Causes entered for the Sitting on the 24th of November will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Exchequer of Pleas.

In Term.

MIDDLESEX.

1st Sitting ... Thursday	Nov. 5
Friday (by Adjournm ^t)	6
2nd Sitting ... Monday	16
Tuesday (by Adjournm ^t)	17
Wednesday (by Adjournm ^t)	18

LONDON.

1st Sitting....Wednesday Nov. 11
 2nd Sitting...Friday 20
 Saturday (by Adjournm^t.) .. 21

After Term.

MIDDLESEX.

Thursday Nov. 26

LONDON.

Friday (to Adjourn only) Nov. 27

The Court will sit, during Term, at ten o'clock.

MISCELLANEA.

DECISIONS IN A COURT OF CONSCIENCE.—THE RECKONING.

There are particular classes of suitors, besides the quarrelsome, whose faces are repeatedly seen in this Court—as the huckster, the club members, the milkmaid, the publican, &c. These, being often wounded, apply often for a cure.

The manufactures of Birmingham are conducted by an amazing number of the lower ranks, a people who are always upon the verge of want, without fearing it. The majority of these useful persons keep one main point in view, and to this every consideration gives way—*how they shall procure a supply of ale*. This seems the height of their wishes. They are not votaries of Bacchus, who presides over the wine-cask, but they worship his deputy, who presides over the ale-barrel.

Thus circumstanced, it is no wonder an *outward* intimacy arises between the publican and the journeyman. The first endeavours to draw the other to his house, who is easily drawn, and he in return endeavours to bilk him. The publican can scarcely receive much of the other's property without losing his own. There is not a petty alehouse in the whole town but chalks up plenty of scores against the journeyman; there is not one journeyman who strives to diminish, but to augment them. He is never frightened, like Balshazzar, at the handwriting on the wall. If he pays off two, it is with a view to put on three. While he uses the house, the scores rest in peace; when he quits it, he is brought to the Court of Requests. An account may be carried on between them for years, but the Court must at last strike the balance. The little publican lives by his enemies, for he subsists upon those who are ever ready to bite him.

Marshall was brought before the Court for fifteen shillings; he acknowledged three shillings and nine-pence, which he was willing to pay. It appeared that four people, of whom he was one, had spent an evening, and the above sum, at a public-house, had not paid their reckoning, and the landlord sued Marshall for the whole.

Marshall urged, "as he had not drunk the whole, he had no right to pay for the whole; he was but a fourth of the number, had drank

but a fourth of the drink, and ought to pay but a fourth of the money. No man had a right to pay for more than he received. The landlord ought to look to each man for his share, and not seek the whole from one; and that there could be no justice in obliging one man to pay for another."

Court (to Marshall). When a company drink at a public-house, they can be considered by the landlord but as one person; they have joined themselves together, and he has no right to put them asunder. He cannot say to one, as he enters, "You may drink," and to another, "You shall not;" nor ask any one whether he has money to pay his reckoning. One may treat another, for what he knows, or he may treat the whole. It is a partnership for that night; and what right has the landlord to inquire who finds the capital? They are equally accountable to him for the whole debt. It is not enough that one pays his part, he must take care that the whole is paid; that is *his* concern, not the landlord's. When the partnership dissolves, whether it be at *mid-day* or *midnight*, every partner is responsible for the debts contracted in the partnership. He who sits silent in company has the same right to pay for the tankard as he who called for it; he who watches at the gate is just as culpable as he who robs the house. If one of them break a glass, it is nothing to the landlord who broke it; he can charge it to the company, as well as its contents, and they must settle the matter with the individual. If this were not the case, a landlord would soon have his cellar emptied, and nothing left to fill it. One man *with* money might bring a dozen without, who being strangers, the landlord is deprived of his property and his remedy; and as no evil can be brought upon a man without its attendant cure—for they follow each other like the substance and the shadow—we must charge the debt upon you. He can take any of the company, and he whom he takes may demand their shares from the rest. It is to your honour that he singles you out; he thinks you the Pam of the pack.—*From Hutton's Court of Requests.*

THE EDITOR'S LETTER BOX.

"A Subscriber," whose articles expire on the 16th of February 1841, though giving the necessary notices before Michaelmas Term to be examined in Hilary Term, cannot be examined conditionally, and receive a certificate on the expiration of his articles to be admitted in Easter Term, unless he obtain a rule of Court for that purpose, which will only be granted on very special circumstances.

We have received several letters on the subject of the proposed Distinctions at the Examination. We shall endeavour to condense them, and then presume the question may stand over till the Examiners have considered it.

The letters of J. R. W.; "A Constant Subscriber"; "Specs"; "Students"; B.; "Lex"; S. S.; "Otho"; T. T.; and "Durante vita," shall have due attention.

The Legal Observer.

SATURDAY, OCTOBER 10, 1840.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

A MEMOIR

OF

THE LATE JOHN TYRRELL, Esq.

WE have now to record the death of a very eminent member of the profession,—that of Mr. Tyrrell,—who, although, from not practising in Court, was not so familiar to the public as some others, yet enjoyed the highest reputation in his own department—that of a conveyancing counsel. This branch of the profession requires, perhaps, different qualifications for success from those demanded of the advocate—great learning, rather than great readiness; although, to succeed as a conveyancer, there must be an equal power of applying the knowledge possessed to the particular matter—an equal memory of facts; and, besides these, there must also be a discriminating judgment, and the faculty of weighing well contending principles or circumstances, and of deciding justly upon them,—which faculty is not so much demanded of the advocate. It is not too much to say that all the requisites of an eminent conveyancer were possessed in a very high degree by Mr. Tyrrell; and we are sure that the few circumstances connected with his life, which we have been able to collect, will be read with interest by our readers.

John Tyrrell was the eldest son of Timothy Tyrrell, Esq., the late City Remembrancer. He was educated at Eton; and, after leaving school, proceeded at once to the study of the law. He was entered at Lincoln's Inn, and soon after became the pupil,—the first, as we believe,—of Sir Edward Sugden, then practising as a conveyancer. Mr. Tyrrell was called to the Bar in Michael-

mas Term, 1815, and immediately embraced the department of the profession in which he became eminent. He soon obtained considerable business, and gradually acquired a very large practice; and this not only in all the ordinary matters which come before a conveyancing counsel, but in parliamentary business, chiefly in preparing private acts of parliament. He was not placed on the Real Property Commission as first appointed, but he at once devoted his time and talents to the inquiries instituted by them, and in the year 1829, he printed and circulated among the profession, his valuable *Suggestions sent to the Commissioners appointed to Inquire into the Laws of Real Property, with Minutes of the Evidence given before them*. This work contained his opinions on the alterations necessary in the law of real property; and although if the work were now before us, we should not concur in all its suggestions, yet it is due to its author to say that it shows great knowledge of the subject, careful reflection on all the leading points connected with it, and that it furnished a body of information of the greatest use in promoting and assisting the discussion, without which, to use his own words, “no important alteration in the laws can prudently be made.” Many of his suggestions were adopted by the Real Property Commissioners, and he was shortly afterwards very properly added to that useful and excellent body. And here it might be supposed by some that he received a very great benefit. It is true that his fame became perhaps more extensive; his power to benefit his country by the exercise of his great learning and experience, was in-

creased; but those who are inclined to measure benefit only by an increase of income should know that he was a considerable loser by taking the office upon him. This is no secret, for, with ingenuous manliness, he mentioned the circumstance in his evidence before the Committee of the House of Commons on Private Business. "I may be allowed to mention," he says, "that the duties of the Real Property Commission permanently reduced to a considerable extent my income."^a

Let us couple this with another fact mentioned by him, that the Real Property Commission by one act alone—the abolition of fines and recoveries—saved the people of this country 100,000*l.* a-year in the alienation of property, and we shall not be disposed to consider these Commissioners very enormously overpaid. But we regret to say that loss of income was not the only loss sustained by Mr. Tyrrell from his labours in this Commission: he suffered what is even more important,—loss of health. His incessant application to his duties in this capacity sowed the seeds of that complaint to which his life has fallen a sacrifice in the full vigour of his mental faculties.

On the expiry of the Real Property Commission,—and that it was allowed to expire before half completing its projected reforms, cannot be too much or too often regretted,—he did not entirely cease his labours for the public. He was in confidential intercourse with the leading statesmen of both parties in the state as to several important law reforms, and he was constantly referred to by them as to many others, so that his opinion frequently decided the fate of a measure. He had more particularly given his attention to the improvement of the practice as to private bills of parliament, and we have already laid before our readers his valuable suggestion on these points.^b Another of his proposed reforms was the establishment of a new board for taxing costs; and when we consider how ready he was to employ his great and varied talents to the service of the public, in framing and carrying out desirable improvements, we consider his loss in this respect irreparable; and while his place may be supplied in the mere vocation of practice, we much fear that we shall not again find a man so willing and so able to devote his best interests and faculties to the public good. We should add, that the

Fourth Report of the Real Property Commissioners—that on wills—on which the new act relating to wills, 1 Vict. c. 26, was mainly founded, is understood to have been written entirely by Mr. Tyrrell. Nor must we forget to state, that he was much beloved in private life; he was frank, liberal, and unaffected, warm in his friendships, and universally esteemed as an amiable and honourable man, and enjoyed the intimacy of several of the most distinguished members of his profession.

Mr. Tyrrell was married to Miss Diana Mary Wyld. He died on the 20th August last, and has left no children. One of his brothers is Mr. Edward Tyrrell, the City Remembrancer; and another, Mr. Frederick Tyrrell, the eminent surgeon.

THE PROPERTY LAWYER.

PROBATE DUTY.

It was decided in the case of *The Attorney General v. Dimond*, 1 Tyr. 243, that French stock belonging to an English testator may be sold abroad by the English executor, and its proceeds administered by him here without paying probate duty thereon. The same subject was fully discussed in the House of Lords in the case of *Attorney General v. Hope*, 4 Tyr. 878, and it was held that probate duty is not payable in respect of the personal assets of an English testator, domiciled and dying in England, which, being locally situate in a foreign country at the time of his death, were not brought hither till after that event, by his executors, though they had obtained an English probate in respect of his personalty situate in England, and proceeded by virtue of that probate to collect and administer in this country the whole of the assets. A similar point arose in the more recent case of *Pearse v. Pearse*, 9 Sim. 430, where, at the death of the testator (who was domiciled in England) his personal estates consisted partly of certain promissory notes of the Indian government, the principal and interest of which, when due, was payable in India, either in cash or by bills on the India company at the option of the holder; and at his death these securities were deposited with the Accountant General and Sub-treasurer at Madras. Shortly before his death he accepted an offer made by the company to have his notes converted into stock, to be registered in England, and to be saleable and transferrable there. The conversion was not completed at the testator's death, nor until after his will had been proved in

^a See his evidence fully given, 18 L. O. 423.

^b See 18 L. O. 418.

England, but ultimately the stock was transferred to his executors. The question was, whether probate duty was payable in respect either of the notes or the stock. "All that the Court has to do" said the Vice Chancellor, "in deciding the present question is, to consider what was the actual position of the property at the time when probate was granted. Whether there was any agreement respecting it is immaterial. The notes which the testator had were simply engagements by the Governor General of India in council to pay certain sums when they should become payable, to the testator or his order, at the General Treasury at Fort William, in Bengal, either in cash or by bills of exchange, at the option of the proprietor of the notes, to be drawn on the Court of Directors of the India Company. Therefore, all that the testator had, was a right to be paid the amount of the notes or to receive bills for it at the treasury in Bengal. He died in February, 1835. In his lifetime a notice was issued, by which an option was given to him and the other holders of notes of the same description, either to be paid off or to convert their notes into stock, and there can be no doubt that it was the testator's intention to convert his notes into stock. But at the time when the probate was granted, there was no debt due from the India Company to the estate of the testator, which could be sued for in this country. The point appears to me to be settled by the decision in *The Attorney General v. Hope*." The question seems to turn on the fact, whether the property is at the time of the probate within the jurisdiction of the Ecclesiastical Court of this country. If so, probate duty is payable; but if not, it is not payable, although afterwards brought within the jurisdiction, and administered in this country.

CHANCERY REFORM.—DUTIES OF CLERKS IN COURT.—TAXATION OF COSTS.*

REFERRING to our former article on the duties of the Sworn Clerks of the Court of Chancery, p. 386, *ante*, in which we noticed Mr. Wainwright's pamphlet in defence of "his order," we proceed now to discuss the present system of taxation of costs. Mr. Wainwright has entered into a very elaborate consideration of the qualifications and merits of the Clerks in Court compared

with the proposed taxing officers. It is clear, as we recently observed, that the principal service rendered by the Clerks in Court consists in the taxation of costs. All their other duties are of an insignificant kind, and may be easily performed by ordinary clerks; even their knowledge of the practice of the court (whatever may be its present value) will soon become merely historical. Under the new act of 4 & 5 Vict. c. 94, the largest part of the mode of procedure will be abolished, altered, or remodelled. These alterations will of course be clearly laid down in the rules, orders and regulations which the judges are authorised and required to make (as Mr. Wainwright says) in "all persons and things in the Court of Chancery." The extensive nature of these alterations will be seen in the first section of the act; they consist,

1st. In the form of writs and commissions, and the mode of sealing, issuing, executing, and returning them.

2nd. In the form and mode of filing bills, answers, depositions, affidavits and *other proceedings*.

3rd. In the form and mode of obtaining discovery by answer, *in writing or otherwise*.

4th. In the form and mode of pleading.

5th. In the form and mode of proceeding to obtain relief, and in the *general practice* of the Court with relation thereto.

6th. In the form and mode of proceeding before the Masters.

7th. In the form and mode of drawing up, entering, and enrolling decrees and orders.

8th. In making and delivering copies of pleadings and *other proceedings*.

9th. In the taxation, allowance, and payment of costs.

10th. In altering, superintending, controlling, and regulating the *business of the several offices* of the Court.

11th. In the collecting the fees payable to the Sutors' Fee Fund, and for directing payment into such fund of the copy money now received by any of the officers to their own use.

12th. In otherwise making regulations for carrying into effect the several alterations.

It will be perceived that when new rules and orders have been made on all these various subjects,—comprehending every stage and proceeding in a cause, from the writ by which it is commenced, to the final decree by which it is terminated,—there will be little occasion for the boasted traditionary

* No. II. of our New Series of Articles on Chancery Reform, will appear in our next Number.

knowledge of the sons, nephews, and successors of the Shaddicks and Jacksons of the last age.

From Mr. Wainewright's remarks on the present system of the taxation of costs, and on the appointment of taxing officers instead of the Clerks in Court, we extract the following statement in support of the present practice.

"The great object of mere taxing officers, particularly if their number be limited, must be to get through their work; therefore the same care will not be taken as at present to settle costs properly. Difficult points will not be investigated; costs will be taxed by guess, and at random. Taxing officers not having the same motives as Clerks in Court now have, to be uniform in their allowances, will not consult each other—will not be checked by each other—will follow their own fancies. Therefore allowances will vary in every office. This would be the case now in the Master's Office, if they were not attended by the Clerks in Court. Hence will arise uncertainty as to costs; neither solicitor nor suitor will be able to calculate on what he ought to receive, or what to pay. Useful rules will be lost sight of, or imperfectly followed. The intelligent and honourable part of the profession will suffer by this; knaves will benefit; the controul over improper persons will be much lessened, and the public will be more exposed.

"Taxation by the Clerks in Court prevents these inconveniences.

"1st. Clerks in Court being officers of the Court, and being intrusted with the taxation of costs, and responsible to the Masters and the Court for the due performance of this duty, above all things endeavour to uphold and make known the rules of taxation, and to maintain an uniformity of allowance. They are aware, that, if they were looked upon by the Court, the Masters, and their clients, as mere advocates, they should soon lose the influence and consideration which they at present possess, and would only be looked upon in the light of counsel on matters of taxation; and then solicitors of experience might justly consider them as superfluous and onerous to the suitor. At present, their character is of a judicial nature. On this account, they never hesitate to oppose their clients (the solicitors) where the rules of taxation require it. They are hence led to investigate and consult with one another on difficult points, and to spare no personal labour in having their business properly settled. Where any difference of opinion is found to exist, the matter is discussed and settled. They take great pains to satisfy the Masters by certificates and by precedents as to the course of taxation. They never differ before the Masters, or with one another, on rules and principles, but only from time to time, on the application of those rules to the particular circumstances of the individual case.

"2nd. In order to satisfy their clients (the

solicitors), they take great pains to acquaint themselves with their rights on any taxation; and to make those rights fully understood; they exert themselves in and out of hours to dispatch business, and prevent the solicitors or the suitors from experiencing inconvenient and injurious delays; and in order to accomplish this object, and from the stimulus of an honourable competition, they take much trouble to make themselves acquainted with business, and with the views and practice of their more experienced brethren.

"But 3rd, (not to mention motives, all powerful though they be, of honour and conscience); by means of the present system, (*viz.*, a Clerk in Court for every party interested in the taxation, attending, and the Master exercising a general superintendence over taxation) it arises that every Clerk in Court is kept in check and reminded of his great duty of preserving uniformity. Even where no party appears to oppose, or where the costs come out of the party's own fund, the Clerk in Court still is under surveillance. All the business of the Sworn Clerks is transacted so publicly, and they are so closely brought together, and so well known to the profession, that the peculiarities and modes of proceeding of any one Clerk in Court, are immediately known to the rest, who, if they consider his conduct improper or injurious to the body, reduce him quickly to order by the decisive expression of their united opinion.

"The practical effect of these checks on the Clerks in Court, must be admitted by those solicitors and managing clerks, who are in the habit of attending much taxation. In fact, I generally find, that experienced men, for whom I am *not* Clerk in Court, will allow me to proceed on taxations without the presence of their own Clerk in Court, if he be prevented from attending, and acquiesce in my decisions. And as to separate taxations, I am frequently told by my clients, that they wish that there was an opponent, as I should be then less vigilant against them.

"As to uniformity of taxation, solicitors are so persuaded of it, that they take the opinion of a Clerk in Court *not* their own, if their own be out of the way, without the least hesitation. Sometimes I am consulted by my clients under the following circumstances—they want to settle a bill of costs with an adverse solicitor, without taxation, in the Master's Office, but they cannot agree on the items. I advise my client to get the other solicitor to refer the bill to any indifferent Clerk in Court, or even to his own, and I am able to tell my client as nearly as possible what will be the result of the taxation.

"Our knowledge of costs, and correctness and uniformity of allowance, are so well known, that the Masters, when they have costs to tax in matters in lunacy, &c., with which Clerks in Court have nothing to do, most usually send them to some one Clerk in Court. Solicitors compromising matters frequently do the same.

"With respect to two or more Clerks in Court attending the taxation of the same bill,

"At first sight this appears objectionable, for two reasons,

"1st, That it must cause unnecessary expense.

"2nd, That it must cause delay.

"Particular instances may no doubt be adduced, in which both these defects would be apparent. But in general this is far from being the case. Collectively, the Clerks in Court receive less for taxation than could be paid under any other system; and in the general run of cases, a party interested either in supporting or opposing a bill, may be well content to pay the Clerk in Court his fee of 6s. 8d. for the security which he derives from his skill and influence of having his business correctly and expeditiously done. There is frequently a great convenience in this system in causes where the parties and their solicitors are very hostile to one another. They all feel reliance on their own Clerks in Court, and leave every thing to them. The Clerks in Court, uninfluenced by the feelings of their clients, agree upon a whole bill in less time than would be consumed upon two or three items, if discussed by angry parties or solicitors before a taxing officer, who must hear all parties.

"With respect to the difficulty of bringing two or more Clerks in Court together, this is not felt in practice. Some one or more Clerks in Court attend and proceed, leaving the others to look over afterwards what has been done."

This is a string of very modest assertions on the part of the Clerks in Court. Why should Mr. Wainwright suppose that taxing officers, specially appointed to perform an important duty, will act by guess and at random, following their own fancies, unchecked by each other, "getting through their work" imperfectly, and without care or due investigation? This is not the case in the Common Law Courts. The board of taxing officers would probably consist of barristers and solicitors who had been engaged in different branches of practice, with some of the present Clerks in Court; thus securing all the knowledge and experience essential to discharge the duty of the office.

The board would not commence its labors without some code of instruction. We have no doubt that a scale of fees would be formed, and regulations made, which would guide, as well the solicitor in making out his bill of costs, as the officer in taxing it. And besides the establishment of certain rules adapted to the generality of cases, the taxing officer would have a discretionary power to make extra allowances in extraordinary cases.

The Clerks in Court act on an old scale of allowances ill suited to the modern state of professional practice. They have no personal knowledge of the nature of the

difficulties which a solicitor has to encounter in conducting a cause in the best manner for his client's interest. This want of actual experience in the business of a solicitor naturally leads to the allowance in some instances of too little, and in others of too much. A solicitor versed in the arbitrary rules of the Clerks in Court, may so conduct a suit as to obtain much larger costs than ought to be allowed. Whilst another solicitor acting conscientiously, doing no more than he deems necessary, but charging all his actual attendances, will find at the end of a long suit, that many of his items will be taxed off, and his zeal very inadequately remunerated.

We are willing to admit that the Clerks in Court, in spite of all these disadvantages, endeavour to discharge their duty faithfully; but we cannot agree with Mr. Wainwright, that it is *satisfactorily* done. We believe on the contrary, that the proposed taxing officers (if well selected) will be able to render justice, which is not now done, as well between the adverse parties in a cause, as between solicitor and client.

It will be recollected that the legislature has already signified its approval of a uniform plan of taxation. By the Law Amendment Act, 3 & 4 W. 4, c. 42, s. 36, the judges were empowered to make regulations for the taxation of costs by officers of the several Courts indiscriminately, and to appoint a convenient place for the business of taxation in all the courts.

THE BANKRUPTCY AND INSOLVENCY COMMISSION.

No. IV.

We continue our abstract of this report:—

"*Of the certificate.*—We are of opinion that requiring the signature of a certain proportion of the bankrupt's creditors, to testify their consent to his having his certificate, is mischievous in its consequences. This state of the law is a prominent cause of fraudulent bankruptcies, of fictitious debts, and of concealment of property, and operates much to the injury of creditors. It is also sometimes the cause of great injustice to the unfortunate but honest bankrupt. If the bankrupt has conformed to the law, and delivered up all his property for the benefit of his creditors, it would be to their interest that he should be entitled to his certificate; but creditors withhold their consent to the certificate, sometimes by way of punishment, sometimes from malicious motives, or from a desire to obtain undue ad-

vantage over the other creditors, or to prevent the bankrupt being a witness in some matter in which a creditor is desirous of excluding his testimony. The requiring the assent of creditors is sometimes attended with a very heavy and useless expense to the bankrupt, and he is tempted, by a knowledge of such expense, and the probability of being obliged to purchase the assent of some of the creditors, to secrete property. A bankrupt is also deterred from giving that assistance in investigating the validity of the claims against his estate, which, under other circumstances, might be reasonably expected of him. We are of opinion that, having a due regard to the interest of creditors, to the situation of the unfortunate but honest bankrupt, and as affording the best check to fraudulent bankruptcies, and the various evils that generally result from them, it would be advantageous that the granting of the certificate should be a judicial act, but that any of the creditors should be permitted to show cause against it, and that the decision should be subject to appeal. We also think that the judge should have power to annex such conditions to the certificate as the justice of the case may require. We think that the provision of the 6 Geo. 4, c. 16, s. 127, respecting the effect of a certificate under a second bankruptcy, operates, in many cases, unjustly both as regards the different classes of creditors and the bankrupt, and therefore requires revision."

The commissioners then mention the following other points requiring alteration in the law of bankruptcy.

"The day for the last examination of a bankrupt should not necessarily, in the first instance, be restricted to the 42nd day from the publication of the bankruptcy. In some cases this period is too long, in others too short: in the former, the rule tends to protract the winding up of the bankrupt's affairs; in the latter, inconvenience and expense are caused by adjournments. The limitation of the time of audits and dividends has also been found to be inconvenient, as impeding that early distribution which is so highly conducive to the interests of creditors. A bankrupt should be entitled to his allowance, after a limited time, before a final dividend. There are some payments in full, from which we think it just that the estate of a bankrupt should be, in some measure, relieved. The first of these is rent, of which the amount of one year is allowed to the landlord in full under a distress to the prejudice of those creditors who are only to receive a dividend. We think that the distress should not be available for more than six months' rent. We think that the payment in full of clerks and servants should be extended to the time at which such persons are usually paid,—namely, to three months salary or wages; and that the privilege should be limited to debts due to workmen, journeymen, and labourers, to the amount of one week's wages, or not exceeding 2*l.* where work has been done by the piece. We think that a person who has been adjudged a bankrupt should be liable to a cri-

iminal prosecution if he do not attend and submit himself for examination whenever he may be directed by the Court, having no legitimate excuse for his absence; or if he has obtained credit by means of false pretences; or if he has attempted to account for his property by fictitious expenses or losses; or if he has made fraudulent sales or gifts of any of his property; or if he has knowingly allowed fictitious debts to be proved against his estate; or if he has appropriated trust-property to his own use; or if he has at anytime concealed, destroyed, altered, mutilated, or falsified any of his books, papers &c., with intent to defraud his creditors. We are of opinion that persons convicted of any of these offences should be imprisoned with or without hard labour, at the discretion of the Court, and that the judgment upon such parties should be advertised. Due facility should be given to prosecutions; and where the estate of the individual bankrupt is found insufficient to meet the costs, the Court should have power to order such prosecutions at the public expense. But whether it would be desirable that the Court of Bankruptcy, or the Court for the relief of Insolvent Debtors, or such Court as may be established in lieu of them, should have to any, or what extent, the power of punishing fraudulent debtors, we leave to the consideration of the legislature. Many other points require revision and alteration: some may be amended by the rules and orders of the Court itself, when armed with sufficient powers: others will require the aid of legislative enactment; but we think it expedient at present to abstain from more minute details as to matters of future amendment, till the practical working of a new system, should your Majesty be pleased to adopt our humble suggestions, shall have been ascertained."

The commissioners then shortly proceed to consider the defects in the administration of the law of bankruptcy in the country.

"It appears, by the evidence which has been given before us, that there are strong grounds for dissatisfaction with the present mode of administering the estates of bankrupts in the country. The fault is in the system, and not in the learned commissioners who administer it; and many of them admit and lament the evils attending it, which they can neither controul nor amend. There are at present 132 districts or places in the country where there are lists of commissioners of bankrupt, each list consisting of five commissioners, who are barristers, solicitors, and attorneys practising in the different counties, and whose names are returned to the Lord Chancellor by the judges who go the several circuits, and are approved of by his Lordship. There are in the country about 700 commissioners in 140 distinct and independent Courts. The lists in most of the districts have very few fiats in the course of a year. During the last two years, only about 35 of the lists had more than five fiats directed to them, so that very many of the lists can have little practical experience in the prosecution of fiats in bankruptcy."

"The evils of which, in our opinion, the public have cause to complain are:—

The constitution of the courts of commissioners in the country.

The objectionable mode of remunerating the commissioners.

The uncertainty attending these tribunals, both with respect to the law and the practice, necessarily arising from their multiplicity, and the want of sufficient practice.

The costs of working fiats.

The difficulty of access to the proceedings, from the want of some central and publicly known place of custody.

The trouble and delay in getting the commissioners together.

The want of publicity, and the checks attendant thereupon.

The delay in getting in the property.

The insecurity of the funds when collected.

The length of time before making dividends.

The small amount of dividends.

The absence of sufficient activity on the part of assignees.

The want of official assignees.

Fiats being frequently prosecuted at places in the country far distant from the principal creditors, who generally carry on business in London or the other great commercial or manufacturing towns.

The large sums of money lying in the hands of country bankers, assignees, and others, which ought to be collected and secured to the creditors.

"We think that these evils will be effectually remedied by the establishment of the Court we shall humbly recommend to your Majesty."

They then notice the defects of the Insolvent Law.

"Upon this subject the evidence which has been adduced before us preponderates greatly in support of the statement made by the Common Law Commissioners, that 'the loud and general complaints of the effects of the present insolvent law are well founded.'

"The prominent defects in the insolvent law are, in our opinion,—

The making a certain term of imprisonment a condition precedent to the relief of the debtor who is willing to surrender his property.

The want of efficient means for the discovery and seizure of property, and for the security thereof.

The very limited extent to which frauds are punishable.

The facility of escaping detection and punishment, and the difficulty and expense to which opposing creditors are subject.

The power of a detaining creditor to liberate a debtor, though remanded to prison for fraud.

The indiscriminate liability of future property.

The lengthened term of imprisonment of debtors in the country compared with those in London.

"With such defects, we think that the in-

solvent law affords no effectual relief to creditors or to the honest debtor, whilst it tends to encourage the commission of frauds by the dishonest."

Having thus pointed out the defects of the bankrupt and insolvent law, they proceed to propose the establishment of a new Court. This we shall reserve for a future number.

CHANGES IN THE LAW.

IN THE LATE SESSION OF PARLIAMENT.

No. XXV.

NON-PAROCIAL REGISTERS.

3 & 4 Vict. c. 92.

An Act for enabling Courts of Justice to admit non-parochial registers as evidence of births or baptisms, deaths or burials, and marriages. [10th August, 1840.]

Certain registers to be deposited in the custody of the registrar general.—Proviso as to registers not received.—Whereas by a commission under the Great Seal, bearing date the thirteenth day of September, in the seventh year of the reign of his late Majesty, certain persons therein named were appointed commissioners for inquiring into the state, custody, and authenticity of any registers or records of births or baptisms, deaths or burials, and marriages lawfully solemnized, as had been kept in England and Wales, other than the parochial registers, and the copies thereof deposited with the diocesan registrars, and for enquiring whether any and what measures could be beneficially adopted for collecting and arranging and depositing such registers or records, and for considering and advising the proper measures to be adopted for giving full force and effect as evidence in all courts of justice, to all such registers as were found accurate and faithful, and for facilitating the production and reception of the same; and by another commission under the Great Seal, issued in the first year of her present Majesty, the powers and duties of the said commissioners were continued: and whereas there are now about seven thousand registers in the custody of the said commissioners, which by their report to her Majesty, bearing date the eighteenth day of June, one thousand eight hundred and thirty-eight, they have recommended to be kept together in some secure place of deposit, and to be deemed to be in legal custody, and to be receivable in evidence in all courts of justice, subject to certain conditions and restrictions therein recommended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the registrar general of births, deaths, and marriages in England shall receive and deposit in the general register office, all the registers and records of births, baptisms, deaths, burials and

marriages, now in the custody of the commissioners appointed by her Majesty as aforesaid, and which they have by their said report recommended to be kept in some secure place of deposit, and also the several registers and records mentioned in the schedules (H.), (I.), (P.), and (Q.), annexed to the said report of the said commissioners, and also such other registers as are herein-after directed to be deposited with him: provided that none of the said registers or records not already in the custody of the said commissioners shall be received by the registrar general, unless the person or persons now having the custody thereof shall, within three calendar months from the passing of this act, send the name to the said commissioners for examination by them.

2. *Continuance of Commissioners for twelve months.—Their duty.*—And be it enacted, that such of the said commissioners as are now living shall be continued commissioners for the purposes herein-after mentioned for the space of twelve calendar months from the passing of this act, and they are hereby authorized from time to time during the said twelve months, to inquire into the state, custody, and authenticity of every register or record of birth, baptism, naming, dedication, death, burial, and marriage, which shall be sent to them within three calendar months from the passing of this act, and such as they shall find accurate and faithful they shall certify under the hands and seals of three or more of them (of whom the registrar general shall not be one,) as fit to be placed with the other registers and records hereby directed to be deposited in the said office; and the registrar general, upon receiving the said certificate of the said commissioners, accompanied by an order of one of her Majesty's principal secretaries of state, shall receive such registers and records and deposit them with the registers and records, which are now in the custody of the said commissioners.

3. *Declaratory provisions as to the general register office.*—And be it enacted, that every office or place where any register or records which by this or any other act, are directed to be in the custody of the registrar general shall be deposited by the direction of the registrar general, with the approval of the lord high treasurer, or three or more commissioners of her Majesty's treasury, shall be deemed to be a branch or part of the general register office, so long as such registers or records shall remain therein, and the execution of this act shall be deemed to be a part of the business of the general register office.

4. *Commissioners to identify the registers deposited.*—And be it enacted, that the said commissioners shall from time to time deliver to the registrar general a descriptive list or lists of all the registers and records now in their custody, and also of all the registers and records which shall be so certified as fit to be placed with the other registers and records in the general register office, containing such particulars, and referring to the registers and records in such manner, as in the opinion of the registrar gene-

ral shall be sufficient to identify every such register and record; and three or more of the said commissioners, (of whom the registrar general shall not be one,) shall certify under their hands, upon some part of every separate book or volume containing any such register or record, that it is one of the registers or records deposited in the general register office, pursuant to this act, and in every case in which the commissioners shall certify to the registrar general as aforesaid, that certain parts only of such registers or records appear to them to be original or authentic, the commissioners shall refer in the descriptive list or lists, and also in the certificate upon such book or volume, to those parts, in such manner as to identify them to the satisfaction of the registrar general.

5. *Lists to be made; which shall be open to search; and certified extracts had therefrom.*—And be it enacted, that the registrar general shall cause lists to be made of all the registers and records which may be placed in his custody by virtue of this act; and every person shall be entitled, on payment of the fees herein-after mentioned, to search the said lists, and any register or record therein mentioned, between the hours of ten in the morning and four in the afternoon of every day, except Sundays and Christmas Day, and Good Friday, but subject to such regulations as may be made from time to time by the registrar general, with the approbation of one of her Majesty's principal secretaries of state, and to have a certified extract of any entry in the said registers or records, and for every search in any such register or record, shall be paid the sum of one shilling, and for every such certified extract the sum of two shillings and sixpence, and no more.

6. *Registers deemed in legal custody, and shall be receivable in evidence.*—And be it enacted, that all registers and records deposited in the general register office by virtue of this act, except the registers and records of baptisms and marriages at the Fleet and King's Bench Prisons, at May Fair, at the Mint in Southwark, and elsewhere, which were deposited in the registry of the Bishop of London in the year one thousand eight hundred and twenty-one, as herein-after mentioned, shall be deemed to be in legal custody, and shall be receivable in evidence in all courts of justice, subject to the provisions herein-after contained; and the registrar general shall produce or cause to be produced any such register or record, on subpoena or order of any competent court or tribunal, and on payment of a reasonable sum, to be taxed as the court shall direct, and to be paid to the registrar general on account of the loss of time of the officer by whom such register or record shall be produced, and to enable the registrar general to defray the travelling and other expenses of such officer.

7. *Fees to be accounted for.*—4 & 5 W. 4, c. 15.—And be it enacted, that every sum received under the provisions of this act by or on account of the registrar general shall be accounted for and paid by the registrar general, at such times as the commissioners of her Ma-

Majesty's Treasury of the United Kingdom of Great Britain and Ireland from time to time shall direct, into the Bank of England, to the credit of her Majesty's Exchequer, according to the provisions of an act passed in the fourth year of his late Majesty King William the Fourth, intituled "An Act to regulate the Office of the Receipt of his Majesty's Exchequer at Westminster."

8. *Wilful injury or forgery of registers, felony*—And be it enacted, that every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register or record of birth or baptism, naming or dedication, death or burial, or marriage, which shall be deposited with the registrar general by virtue of this act, or any part thereof, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or record, or shall wilfully insert or cause to be inserted in any of such registers or records any false entry of any birth or baptism, naming or dedication, death or burial, or marriage, or shall wilfully give any false certificate, or shall certify any writing to be an extract from any register or record knowing the same register or record to be false in any part thereof, or shall forge or counterfeit the seal of the said office, shall be guilty of felony.

9. *Extracts from registers to be stamped with the seal of office*—And be it enacted, that the registrar general shall certify all extracts which may be granted by him from the registers or records deposited or to be deposited in the said office, and made receivable in evidence by virtue of the provisions herein contained, by causing them to be sealed or stamped with the seal of the office; and all extracts purporting to be stamped with the seal of the said office shall be received in evidence in all civil cases, instead of the production of the original registers or records containing such entries, subject nevertheless to the provisions herein-after contained.

10. *Extracts to describe the register whence taken*—Production of register shall be sufficient.—And be it enacted, that every extract granted by the registrar general from any of the said registers or records shall describe the register or record from which it is taken, and shall express that it is one of the registers or records deposited in the general register office under this act; and the production of any of the said registers or records from the general register office, in the custody of the proper officer thereof, or the production of any such certified extract containing such description as aforesaid, and purporting to be stamped with the seal of the said office, shall be sufficient to prove that such register or record is one of the registers and records deposited in the general register office under this act, in all cases in which the register or record, or any certified extract therefrom, is herein respectively declared admissible in evidence.

11. *Certified extracts may be used in courts of law and sessions, upon notice given*—And be it enacted, that in case any party shall intend to use in evidence on the trial of any

cause in any of the courts of common law, or on the hearing of any matter which is not a criminal case at any session of the peace in England or Wales, any extract, certified as herein-before mentioned, from any such register or record, he shall give notice in writing to the opposite party, his attorney or agent, of his intention to use such certified extract in evidence at such trial or hearing, and at the same time shall deliver to him, his attorney or agent, a copy of the extract, and of the certificate thereof; and on proof by affidavit of the service or on admission of the receipt of such notice and copy such certified extract shall be received in evidence at such trial or hearing, if the judge or court shall be of opinion that such service has been made in sufficient time before such trial or hearing to have enabled the opposite party to inspect the original register or record from which such certified extract had been taken, or within such time as shall be directed by any rule to be made as herein-after provided.

12. *If the original be used, notice must nevertheless be given*—And be it enacted, that in case any party shall intend to use in evidence on such trial or hearing any original register or record (instead of such certified extract), he shall nevertheless, within a reasonable time, give to the opposite party notice of his intention to use such original register or record in evidence, and deliver to such opposite party a copy of a certified extract of the entry or entries which he shall intend to use in evidence.

13. *Certified extracts may be used in evidence on examination of witnesses, or at the hearing of the cause in courts of equity, upon notice*—And be it enacted, that in case any party shall intend to use in evidence on any examination of witnesses, or at the hearing of any cause in any court of equity, any extract, certified as herein-before mentioned, he shall, ten clear days at the least before publication shall pass in any cause where no commission has issued for the examination of the witnesses of the party intending to give such evidence, or where such commission shall issue, then seven clear days at the least before the opening of such commission, deliver to the clerk or clerks in court of the opposite party or parties a notice in writing of his intention to use such certified extract in evidence on the examination of witnesses or at the hearing of the cause (as the case may be), and shall at the same time deliver to the clerk or clerks in court of the opposite party or parties, a copy or copies of such extract, and of the certificate thereof, and thereupon such certificated extract shall be received in evidence; provided that at the hearing of the cause the service of such certified copy and notice be admitted or proved by affidavit.

14. *If the original be used, notice must nevertheless be given*—And be it enacted, that in case any party shall intend to use in evidence, on such examination or hearing in any court of equity, any original register or record (instead of such certified extract,) he shall nevertheless, within the number of days herein-

before respectively mentioned, deliver to the clerk or clerks in court of the opposite party or parties a notice of his intention to use such original register or record in evidence, together with a copy of a certified extract of the entry or entries which he shall intend to use in evidence.

15. *Certified evidence to be used in interlocutory proceedings in the master's office.*—And be it enacted, that in case any party shall intend to use in evidence, upon any petition, motion, or other interlocutory proceedings in any court of equity or in the master's office, any extract, certified as herein-before mentioned, he shall produce to the court or master (as the case may be) an extract, certified as herein-before mentioned, accompanied by an affidavit stating the deponent's belief that the entry or entries in the original register or record is correct and genuine.

16. *Certified extract to be used in ecclesiastical courts; and the judge may order the production of the original.*—And be it enacted, that in case any party shall intend to use in evidence in any Ecclesiastical Court, or in the High Court of Admiralty, any extract, certified as herein-before mentioned, he shall plead and prove the same in the same manner to all intents and purposes as if the same were an extract from a parish register, save and except that any such extract, certified as herein-before mentioned, shall be pleaded and received in proof without its being necessary to prove the collation of such extract with the original register or record: Provided always, that the judge of the court, on cause shown by any party to the suit (or of his own motion when the proceedings are in *pænam*), may, after publication, issue a monition for the production at the hearing of the cause of the original register or record containing the entry to which such certified extract relates.

17. *In criminal cases the originals to be produced.*—And be it enacted, that in all criminal cases in which it shall be necessary to use in evidence any entry or entries contained in any of the said registers or records, such evidence shall be given by producing to the court the original register or record.

18. *Rules to be made to regulate the practice as to admission of registers.*—And be it enacted, that at any time within three years from the passing of this act, such rules may be made by the authority herein-after specified, for regulating the mode of reception of the said registers or records, or certified extracts therefrom, in evidence in the courts herein-after mentioned, and for regulating the notice herein-before directed to be given, and the costs of producing such registers or records, or extracts, as shall seem expedient, which rules, orders, and regulations shall be laid before both houses of parliament, and shall take effect within six weeks after the same shall have been so laid before parliament, and shall thereupon be binding and obligatory upon the said courts, respectively, and be of the like force and effect as if the provisions contained therein had been herein expressly enacted.

19. *Who shall make such rules.*—And be it enacted, that such rules shall be made for the High Court of Chancery, by the Lord High Chancellor and the Master of the Rolls; and for the Courts of Queen's Bench, Common Pleas, and Exchequer, by eight or more judges of the last-mentioned courts, of whom the chiefs of each of the last-mentioned courts shall be three; and for the High Court of Admiralty, by the judge of the Court of Admiralty; and for the Ecclesiastical Courts in England and Wales, by the official principal of the Court of Arches, with the Chancellor of the diocese of London, or with the commissary of the diocese of Canterbury.

20. *Fleet and May Fair registers, &c.*—And be it enacted, that the several registers and records of baptisms and marriages performed at the Fleet and King's Bench prisons, at May Fair, and at the Mint, in Southwark, and elsewhere, which were deposited in the registry of the Bishop of London, in the year one thousand eight hundred and twenty-one, by the authority of one of his late Majesty's principal secretaries of state, shall be transferred from the said registry to the custody of the registrar general, who is hereby directed to receive the same for safe custody: provided nevertheless, that none of the provisions herein-before contained respecting the registers and records made receivable in evidence by virtue of this act shall extend to the registers and records so deposited in the registry of the bishop of London, in the year one thousand eight hundred and twenty-one as aforesaid.

21. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

GENERAL RULES OF A COUNTRY LAW SOCIETY.

SEVERAL inquiries having been made regarding the constitution of Country Law Societies for the purpose of aiding the formation of others, we have selected the following Rules which may serve as a general form, to be modified and enlarged as circumstances may render advisable.

1. This Society consists of attorneys and solicitors, residing in the county or city of [], admitted in pursuance of, and acting agreeably to, the following rules of "The [] Law Society."

2. The principal objects of the Society are to preserve the rights and privileges, and support the respectability of attorneys; to promote fair and liberal practice, and prevent abuses in the profession, and to adopt such measures as may appear best calculated to effect those ends, and most likely to secure respect to the practitioners, and to be of advantage to their clients.

3. Persons to be proposed as members shall be nominated and seconded by two members at a general meeting, and shall be ballotted for at the next general meeting, provided there shall be five members present; and the assent of two-thirds of the members present shall be requisite to make an election.

4. All members shall continue subject to the rules of this Society, until they severally desire to withdraw from the Society, and signify the same in writing, to be presented at a general meeting.

5. A general meeting of the Society shall be held in the first week of the assizes, at such time and place as the president of the last preceding meeting shall appoint; and notice thereof shall be given in some of the county papers.

6. The officers of the institution shall consist of a president, vice-president, secretary, and treasurer. The election of the officers of the Society shall be by ballot at general meetings. The president and vice-president shall enter upon their offices at the Spring Assize in each year, and continue in office for one year. The vice-president shall be chosen annually at the Spring general meeting, and shall succeed to the office of president for the ensuing year without further election, and the treasurer and secretary shall continue in office during the pleasure of the Society.

7. Each member upon his admission shall pay one guinea as his subscription for the current year, and shall, at every ensuing Spring Assizes, pay one guinea for the benefit of the Society; out of which all incidental expenses shall be paid, and the surplus become a part of the fund or property of the Society, to be applicable for the general objects of the Society, and for such other purpose as the majority of the members at any general meeting shall direct.

8. The secretary shall write to the several members, whose subscriptions are unpaid, after the Summer Assizes in each year, and request the immediate payment thereof; and in case the annual subscription of any member shall be in arrear for the space of three years, such person shall no longer be considered a member of this Society, but his name be erased from the list of subscribers. Any member whose name shall have been erased from the list of subscribers by virtue of the foregoing rule, may be re-admitted in the usual manner, on payment of the arrears of his subscription.

9. The treasurer's accounts shall be audited annually at the Spring Assizes, and the state of the funds of the Society, together with a list of the members and benefactors, shall be printed, and distributed amongst the members as soon as may be after every audit. All disbursements shall be directed by the committee, and paid by the treasurer.

10. Two-thirds of the members present at any general meeting, (not less than fifteen members being present,) shall have power to expel any member of the Society for what, in their opinion, shall appear to be improper conduct or practice in his profession.

11. There shall be a general committee for the purpose of watching over the interests and promoting the objects of the Society in the intervals between the general meetings, who shall report their proceedings to every general meeting, such committee to consist of the president, vice-president, treasurer, and secretary, who shall be members thereof, *ex officio*, together with one or more members of the Society, in each market town in the county, to be annually chosen at the Spring general meeting, and five of such committee shall have power to act, and any three of whom shall be competent to audit the treasurer's account, and if no other or new committee be then chosen, the existing committee shall continue to act until such other or new committee be chosen.

12. When any member shall intend to propose a new law, or the repeal or alteration of an existing law, he shall give notice at a general meeting, of his intention to make such proposition at the ensuing general meeting, but such notice shall not be necessary in case such new law or repeal or alteration shall be proposed by the general committee. In all cases the secretary shall communicate the substance of such intended proposition to every member by a circular letter, not less than fourteen days previously to the general meeting at which it is to be brought forward.

In some of these societies provision is made for affording pecuniary relief to the members of the society, their widows and families.

LEGAL EXAMINATION DISTINCTIONS.

To the Editor of the Legal Observer.

Sir,

THE letter of "A Country Solicitor," at p. 410, has once more brought up this subject; and its insertion, containing, as it does, allusions to objections I have formerly made, is my apology for again obtruding myself upon your columns.

I would submit that your correspondent is in error, in representing the objectors of the proposed plan as saying "that the distribution of honors in the way proposed is an unequal and improper way of testing the substantial professional merits of the candidates." To this he adds, though not very logically.—"It seems a complete answer to this objection, that it is, as it were in the nature of the thing, and that it prevails equally in all cases where honors are awarded."

In the first place I objected, upon the ground, "that the result of the poll would not be a fair representation of the merits of the youth," not that it would be "an unequal and improper way of testing their ability," for the act of putting the questions and requiring sufficient answers, is the way by which the student's merits are tested; and this plan has

never been objected to. It would not be fair, because the names of the ten or twelve who would be placed first on the list would be published as the cleverest of the examined, whereas they are not so of necessity, they may all of them be very far short of the best in any one branch, and may have attained a tolerably high place in every branch, from the circumstances to which I alluded in my former letter, without having a thorough knowledge of any one branch, whilst a student, who has been concentrating his studies upon one or two branches, (which he intends exclusively to practise,) may in those branches be first or second, and in other branches at a much lower number in the list, and thus he will, as your correspondent observes, meet with an *agreeable* notice in an *inferior* list.

How can it be fair that a man of tolerably quick parts, having passed a great part of his articles in idleness, by spending the six months previous to his examination in the chambers of a gentleman, who prepares students for their examination, there acquires a sufficiently *superficial* knowledge of the law to pass a very good examination, and is placed first or second on the gross poll; while a fellow-student, by a diligent and unwearied attention to one or two branches, acquires a thorough knowledge of them, and at his examination may in those branches give the most satisfactory answers, and perhaps stand first, yet not having so thoroughly studied the other branches, which he may never be called upon to practise, he is placed low in the other lists, and there his total examination will appear to the world as much inferior to his fellow-student, who is utterly ignorant of every branch beyond the most superficial information; yet this must inevitably be the case if the plan that is now acted upon at Cambridge and Oxford be adopted, with regard to law students.

I have before observed that the examination is of itself sufficient, at least the mode in which it is conducted is, and it were easy to give more severe practical questions, if thought necessary; and I hope the examiners will consider well before they adopt a measure which will work so unfairly to the students generally.

A note by yourself, prefacing the letter to which I am now alluding, would infer that the examiners are not altogether averse to alter their present plan, and may probably confer some distinction on some candidates; therefore, perhaps, I may be allowed to add, if prizes are to be awarded at all, though I think still, that considering the difference in the student's studies, any allotment would be unfair, (until they are all educated upon the same plan, and in every respect in the same way.)—I would suggest that there should be as many classes of prizes as there are heads of examination, and that the examiner, who reviews the whole of the common law answers, should mark the first, second, and third best, and award each of the three a prize, differing in either value or degree of honor, and let these be entirely separate from the other classes; the examiner reviewing the conveyancing answers doing the

like, and so on through the whole five branches; and thus a student, thoroughly understanding one or more branches of the law, will have an equally fair chance of receiving what his industry has earned, with his fellow-student, who, under the other proposed plan, might have received a prize most undeservedly, from possessing only a superficial knowledge of the law, recently gained from the professional gentleman, who makes it his business to instruct lazy and idle young men, just sufficiently to pass their examination with apparent credit.

I cannot conclude without again observing, that it cannot be considered as necessary for the law student to be fully acquainted with every branch of his profession, as it is for the university-man to be prepared upon each of the branches of classics, divinity, and mathematics, because, the one may probably be called upon hereafter to practise in only one or more branches of the law exclusively, while to the proper understanding of the other's profession the whole of his studies are necessary.

W. J. M.

[We trust that "A Young Student" will excuse the insertion of his letter, the purport of which appears to be comprised in the above. Some of our readers think that enough has now been said on this subject, both *pro* and *con*.
Ed.]

Sir,

There may be, and I have no doubt, are, different opinions, as in most other matters, with respect to the desirableness of some honorary distinction for those who pass a good examination; but I never dreamt of seeing the plan opposed upon such extremely low ground as is taken by "A Solicitor." He completely begs the question. A man who knows not the excitement of a noble emulation, and who had rather creep on in the dark, than attempt to distinguish himself in the face of the world, is in my mind much more likely in after-life to be actuated by sordid motives, than the individual, who at starting, seeks the broad light of day, and places his name upon the list of those who, by their early exertions, have attained an honourable distinction.

A WELL-WISHER.

I read with much interest the letter of "A Country Subscriber," on the subject of the distinctions to be conferred at the legal examinations. I only differ with him as to the publication of the first mentioned lists, which, though useful as machinery in forming the other paper, would render his plan, in appearance at least, too complex; but more particularly, because it is very necessary that the number distinguished should not be so great as to throw any, the slightest, discredit on those who may not obtain honors, and who, nevertheless, may not be inferior to their more successful competitors in qualities, equally as

necessary to make a good lawyer, as technical knowledge, which would really result from their names not appearing in any one of five lists, each of ten names. Besides, though I should be sorry if the number were reduced, it is quite sufficient to give ten an opportunity of distinguishing themselves, and the case of those who only study certain branches of the law must yield to the general advantage.

In reference to a remark of your correspondent's, I would observe, that the *talent* and *industry* of each candidate will appear from his answers to the examination papers, but in what way he proposes that the examiners are to learn, and to take cognizance of the *conduct*, *situation*, and *opportunities* of them all, I am unable to conceive. Such a rule can never be introduced at all; if it were it would lead to frequent injustice.

As to the *prizes*, it is quite indifferent to those who are, in asking for distinctions, only seeking to lay the foundation of professional success, in what way their fitness to be intrusted with the interests of others is made known.

AN ARTICLED CLERK.

NOTICES OF NEW BOOKS.

Private Wrongs and their Remedies, being the Third Book of Blackstone's Commentaries, incorporating the alterations down to the present time. By James Stewart, of Lincoln's Inn, Esq., Barrister at Law. 1840.

A good edition of Blackstone's *Commentaries* is an almost indispensable requisite to every library; however small, it should embrace it; however large, room should be found for it. It is a book which can hardly be read too often, or began too early. The labours of our great commentator have put within the reach of all the acquisition of the principles of the law of England; even to the non-professional reader scarcely any portion can be tedious or obscure, and the lawyer should be familiar with every line. It may not be required of him to know very intimately those portions of our law which are beyond his own immediate walk in the profession; but he should certainly be acquainted with all that Blackstone has written on all branches, and next, how it stands at the present day. The last is obviously essential for all practical purposes. The work, "may be considered," says Mr. Stewart, in the Preface to the first volume of his edition, "in two lights; they may be viewed as a methodical and elegant statement of what the law was about sixty years ago, when they received the last

corrections of their author; or as an authentic account of the law at the present day. In the former light, their use remains unimpaired, and they must be read with profit by all who wish to study the legal history of Great Britain, but it is obvious that in the latter they have lost much of their original value. They can no longer be referred to for the existing law, and their practical advantages are thus unavoidably diminished. The lawyer may indeed know what part is now obsolete, or what statute has been repealed; but the general reader and the student are only able to guess at the alterations, or may be ignorant of them altogether."

How then shall this deficiency be supplied? Before Mr. Stewart's edition, every edition adopted the plan of foot notes for stating the alterations made by statute or decision. Of these editions the merit was various: Mr. Justice Coleridge's was perhaps the best. In this the notes were very short, simply stating the change made, and sometimes referring to other works for further information. But this edition, besides being scarce, was published in 1825, and does not, therefore, embrace any of the important alterations in the law subsequent to that period. Of the other editions, prior to Mr. Stewart's, and subsequent to Mr. Justice Coleridge's, we have already had occasion to express our disapprobation, and to state our reasons fully, and the profession having followed our opinion in this matter, has called for a new edition. This demand has in our opinion been ably and usefully supplied by Mr. Stewart, and we are happy to hail the appearance of the Third volume of his edition, and to be assured that the Fourth and last volume will speedily appear. The preceding volumes have deservedly obtained a great hold on the profession, especially on the law student, and we think this volume will be fully as successful as they have been.

Its contents, as our readers are aware, are of a varied character: they embrace *Private Wrongs* and their Remedies. To edit them, a knowledge, equally of our equity as our common law courts, is required. Mr. Stewart has diligently set to work to shew exactly how the law stands in both these respects at the present day; he has stated the various alterations concisely but clearly, and has thus given to the public and the profession a work of no little use. These alterations, as in the former volumes, are introduced into the text, and a reference to the page of Blackstone is given in the side margin, by attending to which, it may easily

be seen, if desired, what alterations and omissions have been made. "And this" adds Mr. Stewart, "will perhaps be found a useful practice for the student."

It is justly observed that in this volume the alterations in the law are more numerous and important than in any other; the sweeping away the whole tribe of real actions (with three exceptions) in itself made much of this volume entirely obsolete, and to state the existing remedies demanded the attention of a property lawyer. Chapter 10. "Of injuries to real property, and first, of dispossession or ouster of the freehold." Chapter 14, "of waste" Chapter 16, "of disturbance," are the chapters principally affected by the abolition of real actions. Let us take for instance, the chapter "of waste," the old remedies for the injury of waste were preventive, by writ of *estrepement*, and corrective by that of waste. By the 3 & 4 W. 4, c. 27, s. 36, the writ of *estrepement* is abolished, the effectual remedy having long been found to be in a Court of Equity, by obtaining an injunction. The action of waste, founded on the writ of waste, was "a mixed action," says Blackstone, "partly real, so far as it recovered land; and partly personal, so far as it recovered damages, for it was brought for both these purposes." "But the writ of waste," says Mr. Stewart, "has also been abolished by the 3 & 4 W. 4, c. 27, s. 36, and the only effectual mode to restrain waste is to obtain an injunction in a Court of Equity, and this may be followed up by an action of ejectment, and an action on the case for damages." Mr. Stewart thus pursues the whole of the alterations, stating the former and present state of the law, and the precise alterations which have been made. Nor has Mr. Stewart shrunk from grappling with the recent changes in process and pleading, and he has judiciously added in the Appendix, a summary of modern forms, which will be of great use to the student in working up this part of the subject. Altogether, we think the volume is well worthy a place beside the others, and, as furnishing a part of the latest and most complete edition of Blackstone, we can conscientiously recommend it both to the public and the profession. It should be observed, that the *whole* of the original text of Blackstone is retained, incorporating the law down to the end of the last session of Parliament.

SUPERIOR COURTS.

Rolls Court.

MORTGAGEE IN POSSESSION, LIABILITIES OF.

Where a mortgagee takes possession of the mortgaged property he will be liable to a fair occupation rent, though the property, being held with other premises, may not yield an apportioned rent equal to such occupation rent, and he must also account from the time he takes possession, even if the tenant becomes insolvent, and he is unable to recover the rent which has accrued.

This cause came on for hearing on exceptions to the Master's report and for further directions. The defendant, Findon, was assignee of a mortgage executed by Mr. William Falkner, deceased, of certain corn-mills and lands adjoining, situate at Chalcomb, in Northamptonshire, and the bill was filed by the plaintiffs, his widow, and two daughters, for an account. In pursuance of the decree directing the usual accounts to be taken, the Master had made his report by which he had charged the defendant with an annual rent of 201*l.* from March, 1815, to June, 1821, and to this report the defendant excepted on the following grounds, viz., 1st., that the Master had charged him with rent at an earlier period than he was liable to account for; 2ndly, that he had been charged with rent which he had not actually received; 3dly, that he had been charged with a higher rent than the mortgaged property produced; and 4thly, that he had been charged with rent to a later period than could be properly claimed against him.

Pemberton and Cuckerill, for the defendant.—The mortgagee took possession in September, 1815, and there could be no pretence for charging him with rent prior to that period, when it appeared that owing to the insolvency of the tenant he had recovered only a small portion of the rent that had accrued due. It had been urged before the Master that the defendant might have recovered the arrears by distress, and that it was owing to his own *laches* that the rent had not been received; but this was not the case. The property was held by the tenant conjointly with other land, and inasmuch as there was no apportioned or agreed rent, and a distress will not lie for use and occupation, the defendant could not avail himself of this remedy. Then, with regard to the value, the Master had not enquired what the fair apportioned rent would be with reference to the whole property held by the tenant, but had charged the defendant upon the evidence of a single surveyor with an annual rent of 201*l.*, although the defendant had proved by several competent witnesses resident in the neighbourhood that such a rent was excessive. The testimony adduced by the defendant on this point, was also fully borne out by actual circumstances, for in 1824 the rent was reduced by arbitration to 115*l.* a year, and when the tenant quitted in

1828, the utmost rent that could be obtained was 80*l.* a year. The property also was vacant from November 1820, to June 1821, and for this period the defendant could not under any circumstances be charged.

Kindersley and Martindale, for the plaintiffs.—The finding of the Master is perfectly correct. 1st, The defendant, having taken upon himself the management of the mortgaged property, ought to have taken the necessary steps for securing the rent, and the mortgagor, or those claiming under him, must not be damaged by his remissness. The value of the property was most satisfactorily proved by the evidence of professional men well acquainted with property of the description now under consideration, and the Master did right in relying upon their judgment. It should also be borne in mind that the frame of the exception with regard to the rent is, that 150*l.* a year, and no more, ought to have been allowed by the Master as the annual rent, so that if the Court should be satisfied that more than 150*l.* ought to be allowed, the exception cannot stand. *Twyford v. Trail*, 3 Myl. & Cr. 645.

The Master of the Rolls said, that it appeared that shortly after the defendant took possession of the mortgaged property, the tenant attorned to him in respect of the premises comprized in the mortgage. No rent was received by the defendant for a long time, but in 1820 he brought an action against the tenant for use and occupation, and obtained a verdict and judgment; but shortly afterwards the tenant went off, and the defendant was unable to secure any portion of the amount thus found to be due. The Master had charged the defendant with what he considered to be a fair rent, and it could not be disputed that the defendant was so chargeable from the time of the attornment so long as the tenant continued in possession. In ascertaining this rent, the Master had not been guided by the agreement with reference to the whole property held by the tenant, but had enquired what was a fair rent for the mortgagee in possession to be charged with, and in that the Master was right. Then came the question of value, respecting which there was contradictory evidence. The Master, relying upon the evidence of the surveyor, had charged the defendant with the same amount of rent annually, from 1814 to 1821, although from the great reduction of rents made in all leases during that interval it was impossible not to know that the value of real property must have been greatly lessened. The Master had indeed found that the land in the lease not comprized in the mortgage, was let up to 1815, at 45*l.* and afterwards at 31*l.* a year, and it was difficult to conceive how one portion of the land could vary in rent, and not the other. It must therefore be referred back to the Master to review his report in that respect. With regard to the period during which the premises had been unoccupied, it appeared that the property was so much out of repair that no tenant could be found to take them; but as the defendant, as mortgagee in possession, ought not to have allowed the premises to get into

such a state of non-repair, he could not be excused from liability for rent on that ground. The deposits must be returned on each side, and the exceptions with reference to the above points allowed.

Fulkner v. Matthews, July 22d and 23rd, 1840.

Queen's Bench Practice Court.

RULE TO COMPUTE.—RULE TO PLEAD.—LACHES.

If a rule to compute has been obtained, the irregularity of the judgment on which it proceeds cannot be shewn as cause against it; but an opportunity will be afforded to apply to set the judgment aside, by staying proceedings on the rule.

Walesby shewed cause against a rule nisi for a rule to refer it to the Master to compute principal and interest on a bill of exchange. The cause shewn was, that judgment had been signed without a rule to plead. He was aware that the irregularity of the judgment could not be shewn as cause against a rule nisi of this description. It had been so held in the case of *Kelly v. Villebois*;* but he made a similar application to that which was granted in the case cited, which was that the proceedings might be stayed until an opportunity was afforded to move to set aside the judgment.

Coleridge, J.—I will grant a rule to set aside the judgment, and in the mean time make this rule absolute with a stay of proceedings, until the rule I have just granted is disposed of. I think you ought to have come to the Court with respect to the judgment, which you say is irregular, as soon as the rule to compute was served. I shall leave the question open as to whether the application is made in good time.

Rule accordingly.—*Wyles v. Plushett*, T. T. 1840. Q. B. P. C.

Eschequer of Pleas.

2 & 3 Vic. c. 29.—RETROSPECTIVE OPERATION.

The 2 & 3 Vic. c. 29, has a retrospective operation. Goods of B. were seized under an execution on the 12th July, and were sold on the 15th; on the 18th a fiat in bankruptcy issued against B.; on the 19th the act passed and came into operation; and on the 31st the assignees were appointed: Held, that the seizure was protected by the act, and that the assignees could not recover the amount of the sale, as money received to their use.

Alexander and Crompton had obtained a rule nisi in this case, calling upon the plaintiffs to shew cause why the verdict returned at the trial before *Erskine, J.*, should not be set aside,

and a nonsuit entered. It was an action of *assumpsit* for money had and received, to the use of the plaintiffs, as assignees of a bankrupt. The defendant pleaded *non assumpsit*, and that the plaintiffs were not assignees *modo et forma*. The cause was tried at the Spring Assizes for the county of Lancashire, and it was proved in evidence that on the 12th July, 1839, the defendant, as sheriff, seized certain goods of one Boddington, under an execution, which were sold on the 15th of the same month. On the 18th a *fiat* in bankruptcy issued against Boddington upon an act of bankruptcy committed subsequently to the seizure, and on the 31st the plaintiffs were appointed assignees. Upon this state of facts, it was urged that the plaintiffs were not entitled to recover, the transaction being protected by the statute 1 & 2 Vict. c. 29. That act received the royal assent on the 19th July; but in a case of *Lukin v. Simpson*, decided in the Court of Common Pleas in the present term, it had been held to have a retrospective effect. Its provisions were, "that all executions and attachments against the land and tenements, or goods and chattels of any bankrupt, *bona fide* executed or levied before the date and issuing of the *fiat*, shall be deemed valid, notwithstanding any prior act of bankruptcy, provided the person at whose suit, and on whose account such execution or attachment shall have issued, shall not, at the time of executing or levying such execution, have notice of such prior act of bankruptcy."

Wightman shewed cause, and contended that the doctrine of the Court of C. P. must be taken in a very qualified sense; otherwise injustice might be done to vested rights. *Edwards v. Lawley*, 8 D. P. C. 234, was at variance with the broad doctrine contended for on behalf of the defendant. The judgment of *Parke, B.*, in that case was, "If a *fiat* had issued, and assignees had been appointed before the act passed, they would have had at the time of the seizure a vested right to the property of the bankrupt, and it would have been unjust to consider the act as defeating that right, and depriving them of any part of the property. Even if the assignees had not been appointed when the act passed, provided the *fiat* issued before the date of the act, we should, in that case also, construe it so as not to defeat the right of the assignees. But with respect to a *fiat* issued after the date of the act, we think there is no injustice in saying that the assignees must take the property subject to the new law." That judgment was strongly applicable to this case.

Lord Abinger, C. B.—I think the rule must be made absolute. Even if we were to construe the statute in the way contended for on behalf of the plaintiffs, still we should have a right to say, on the facts of the case, as they stand before us, that there are here no vested rights

to interfere with the rights of the execution creditor. The *fiat* issued on the 18th July; the act of parliament received the royal assent on the 19th; but no assignees were appointed until the 31st. I think that if we were to hold that the rights of the assignees had relation back to the date of the bankruptcy, it would be continuing a fiction which this statute is intended to prevent, and which has already worked great injustice. *Edwards v. Lawley* differs from this case. There the *fiat* was issued after the act came into operation, but on an act of bankruptcy committed before the levy was made, and the Court held the execution to be valid against the assignees, for how could the parties know whether assignees would be appointed or not? Here the assignees were not appointed until the 31st July, and their appointment might not have taken place until the 31st September, or any other month, and I do not think that the effect of that appointment is to divest the right of the execution creditor. I go the whole length of the decision of the Court of C. P., and I think it is unnecessary to take the narrow view contended for. The act evidently means, that in all cases where the creditor has levied his execution, and a sale takes place before the proceedings in bankruptcy, the creditor is not to be prejudiced by an act of bankruptcy. I know very well that Sir Samuel Romilly, who introduced the original bill upon this subject, was disposed to have the law then settled as it is now, for he felt sensibly the inconvenience that would ensue from the doctrine of relation giving assignees vested rights. In every case therefore, where execution is issued, and neither *malu fides*, nor any knowledge of the *fiat* in bankruptcy can be shewn to have existed on the part of the execution creditor, the transaction is protected against the bankruptcy and its consequences, and I think that the judgment of the Court of C. P., is right in law, and meets the justice of the case.

Alderson, B., and *Rolfe, B.*, concurred.

Nelutrop and another, assignees of Boddington, a bankrupt, v. Scaribrick, T. T. 1840. Exch.

THE EDITOR'S LETTER BOX.

The communications of "Otho;" S. S.; M. H. G.; "Lex;" "Aliquis;" and "Bristolensis," will be inserted as early as practicable.

Several letters with information for *The Legal Almanac, Remembrancer and Diary*, have been received, and shall be attended to. Any further suggestions should be sent immediately.

The Legal Observer.

SATURDAY, OCTOBER 17, 1840.

—————"Quod magis ad nos
Pertinet, et noscire malum est, agimus.

HORAT.

CHANCERY REFORM.

No. II.

THE profession is naturally in a state of considerable excitement with respect to the nature of the reforms to be effected under the 3 & 4 Vict. c. 94; first, as to what *can* be done under it; and next as to what *will* be done under it. We cannot help thinking that the whole subject of equity reform must be considered together, and that a new act or acts must be passed to carry out the desired reforms. The great advantages gained by the act of the last session are, that it enables the Court to deal with all offices connected with the existing abuses, and that it has set men seriously to consider what should be done. Still, however, a part only of the necessary reform can be effected under this act; for do we not require alterations—1st. In the appellate jurisdiction of the House of Lords. 2. In the Privy Council. 3. In the Equity Exchequer. 4. In the Court of Bankruptcy, 5. In the Court of Chancery—its judges, its pleadings, and procedure. 6. In the offices connected with this court? There will, therefore be great advantages in considering the whole subject in one view, in doing as much as can be done under the present act, and in demanding from the legislature all further and necessary powers for effecting the rest. We purpose in subsequent articles to consider what is necessary under each of the heads we have mentioned, but we wish at present to suggest the necessity of examining the subject throughout, in what we consider its true light.

One great error running through the framework both of the Courts of Chancery and

Bankruptcy is, the confounding and mixing up unnecessarily and improperly, the judicial and administrative functions. There must exist in every great country, a machinery for managing property, which the disability of the parties, from whatever cause arising,—infancy, lunacy, bankruptcy, or any other,—renders it necessary for the state to take under its protection, or into its custody. There should be an ample and fitting machinery for this purpose; and doubtless, in the course of its management and administration, questions will spring up which demand the exercise of the judicial faculty; but it is obvious that the two functions should be kept as distinct as possible. The judicial department requires a very different order of mind, and we should add, of remuneration, from the administrative, which should be quite subordinate to the other. As at present arranged, however, we impose many administrative duties on persons who should act purely in a judicial capacity,—such as the masters and commissioners of bankrupt; and again, we remunerate others, such as the Clerks in Court, for the performance of very little indeed but administrative duties, more highly than the judges themselves. All this surely is wrong; there should be a proper discrimination used in allotting the duties to the various officers of the Court. The masters, for instance, and the commissioner, should be relieved entirely from the greater part of their present administrative duties, which occupy the greater portion of their time, such as the taking formal accounts, the administering oaths, and other matters which may be managed quite as well by a much inferior officer, and should be employed only on such matters as their learning

and station in the profession render familiar to them, and in which they may be really and usefully employed.

And here we would point out the necessity, in our opinion, of blending the two inquiries of Equity and Bankruptcy reform in this report. There need, as it appears to us, be but one machinery for taking accounts, and we cannot see why there need be one set of men for taking an administration account, and another set of men for taking a bankrupt account. There should be a machinery which may be put into execution as quickly as possible, for seizing in certain cases the property either of a trader or of a testator. A speedy remedy is often as necessary for the ends of justice in the one case as the other, but once in the hands or power of the Court, we see no necessity for two modes of administering it. It is a fortunate circumstance, therefore, that the Bankruptcy Court being in an unsettled state, and the report of the commissioners just laid before parliament, the inquiry as to the necessary reforms can go hand in hand with that of Chancery Reform; and we are certainly inclined, not only to restore the jurisdiction in Bankruptcy and the judicial functions to the Court of Chancery, but to unite the administrative part again in one Court. The public will thus obtain a better class both of judges and officers; a larger fund will be applicable for the payment of all necessary persons, the bankruptcy funds being united with the chancery funds; a better power of administering the estate, and a more ready access to the competent judicial power to decide all questions arising in its administration, and above all, a uniformity in the mode of distributing the property, and of deciding on the rights of persons interested in it.

We trust these few remarks will not appear desultory or out of place. In our ensuing articles under the heads we have indicated, we will at any rate be sufficiently specific.

THE LAW OF JOINT-STOCK COMPANIES.

No. VIII.

THE TRANSFER OF SHARES.

WE hope, first and last, to be able to furnish our readers with a complete treatise on the subject of Joint Stock Companies; and we shall lose no opportunity of bringing before them the cases as they are reported, and arranging them under the heads previously dis-

cussed, or opening new heads for future discussion. We now wish to call attention to a late important case relative to the transfer of shares.^a It is by no means an unusual transaction in dealing with this species of property to leave the name of the purchaser in blank in the transfer. This is done that the deed of transfer may be bought and sold in the market as the security for the share; and when a *bond fide* holder is found who wishes to retain the share, the form is filled up with his name, and the transaction is registered, and such last purchaser is accepted by the company as the holder of the share. We wish now to show that a transaction of this nature is invalid. The rule of law as to deeds in this respect is this: If a deed be signed and sealed, and afterwards written, it is no deed. *Com. Dig. Fait. A. 1*; *Shep. Touch. 54*. When a deed referred to a schedule as annexed, which was not annexed at the time of execution, it was held that the subsequent annexation in the absence of one of the parties, did not give it operation as part of the deed. *Weeks v. Mailardet*, 14 East, 568. However, in *Hudson v. Brett*, 5 Bing. 372, a blank in a part material was afterwards filled up, but having been done in the presence of the party, and ratified by him, it was held that there was evidence of redelivery. The case to which we refer was decided on the Brighton Railway Act, 1 Vict. c. cxix, which requires (s. 155) the conveyance of shares to be in writing, duly stamped, to be under the hands and seals of both parties. The clause afterwards calls the instrument "a deed or conveyance," and "a deed of sale or transfer," and a form of transfer is given in the act; and it was held that this conveyance must be, in order to satisfy the statutes, *by deed*; and therefore that an instrument of transfer of shares executed by the proprietor of such shares, with the name of the purchaser in blank, and handed over by him to the plain-

^a We shall here recapitulate the articles on the subject contained in the present volume. I. On the Transfer of Shares, and Liability of Shareholders, p. 1. II. & V. Actions by and against Companies, p. 34. III. On the Liability of Directors, p. 113. IV. Points as to Railway Companies, p. 130. VI. On making Calls. VII. On obtaining Letters Patent.

tiff, by whom, on the sale of such shares, the defendant's name was inserted as the purchaser, was void. We extract the following portion of the judgment of Mr. Baron Parke. "The conveyance required by the statute must, we think, be by deed; and a deed, with the name of the vendee in blank at the time it was sealed and delivered, is void. The instrument of transfer, by the 155th section, must be under the hands and seals of both parties. It was argued, that it did not follow, from the instrument being under seal, that it was a deed; for warrants of justices, subpoenas, and awards, are under seal, and are not deeds. But this is an instrument containing a contract of the parties; if a contract is required to be by instrument under seal, it must be intended that it should be by deed; and the context shews that the legislature so intended it, for it is afterwards called a deed or conveyance (probably a synonyme for the same thing), and a deed of sale or transfer, that is, a deed of sale or of transfer. Assuming, then, the instrument to be a deed, it was wholly improper, if the name of the vendee was left out; and to allow it to be afterwards filled up by an agent appointed by parol, and then delivered in the absence of the principal as a deed, would be a violation of the principle that an attorney, to execute and deliver a deed for another, must himself be appointed by deed. The only case cited in favour of the validity of a deed in blank, afterwards filled in, is that of *Tesira v. Evans*, cit. 1 Anst. 228, where Lord Mansfield held, that a bond was valid which was given with the name of the obligee and sum in blank to a broker to obtain money upon it, and he borrowed a sum from the plaintiff, and then inserted his name and the sum. But this case is justly questioned by Mr. Preston, in his edition of Shepp. Touch. 68, 'as it assumes there could be an attorney without deed;' and we think it cannot be considered to be law. On the other hand, there are several authorities that an instrument which has a blank in it, which prevents it from having any operation when it is sealed and delivered, cannot become a valid deed by being afterwards filled up." His Lordship then mentioned the authorities to which we have already referred, and held that the deed was void, observing

that this was, in truth, an attempt to make a deed transferrable and negotiable like a bill of exchange or exchequer bill, which the law does not permit. *Hibblewhite v. Mc Morine*, 6 Mee. & W. 200.

ACTIONS BY AND AGAINST COMPANIES.

On this subject we add the following case, which is of some importance, when it is remembered that it is the usual practice of these companies to employ shareholders in the way of business wherever they can. Debt for goods sold. Plea, *nunquam indebitatus*. It appeared that the defendants were three of the directors of the Kent Zoological and Botanical Institution; and the present action was brought by the plaintiff, who was a butcher at Gravesend, to recover the price of meat supplied by him for the animals in the society's gardens at Rosherville. The defence was, that the plaintiff was a shareholder in the institution, and to prove this, another shareholder was called. It appeared that the witness had been released by one of the defendants only. *Crowder*, for the plaintiff, objected that the witness was not competent, as either of the two defendants, who had not released him, might sue him for contribution in case the plaintiff succeeded against them in this action. He further submitted that, to make the witness competent, he should be released by all the other shareholders, as any of them might sue him hereafter for contribution. *Alderson, B.*—I think that the witness is not competent unless all the three defendants release him, but if he be released by each of the defendants, he would be a competent witness, without being released by all the other shareholders. The witness was not examined. The case was compromised. *Betts v. Jones*, 9 C. & P. 199.

LIABILITY OF DIRECTORS.

In No. III. of this series we inquired into the liability of directors, and under this head we have also to add the following case. It appeared that a railway was proposed from Nottingham to London, and that the plaintiff was appointed secretary to the local committee, the defendant becoming one of that committee in October, 1838, and while the plaintiff's services continued. The company was

never formed, and the projected railway given up. In an action by the plaintiff against the defendant for work and labour as secretary, the defence was that the plaintiff was only to be paid from the funds of the company when formed; but that it had been agreed between him and the committee that the committee were not to be personally liable, and a minute book of the committee was put in, containing a resolution in the plaintiff's hand-writing to that effect. "The members of this committee," said Mr. Baron *Alderson*, "would be the persons liable to pay the salaries of those who were employed like the plaintiff, unless the plaintiff contracted only to be paid from some particular fund, and were to look to the committee for payment of his services. It seems to be made out thus,—the defendant was a member of the committee from Oct. 1838. He was not so when the plaintiff first became secretary, but if he continued to employ the plaintiff as secretary, it will be for you to say whether he did not continue to employ him on the terms upon which he was originally appointed. Still the real question is, whether the plaintiff agreed that he was not to look for payment from the members of the committee individually, but was only to be paid from the deposits and instalments in case the company was formed. The jury found for the defendant. *Kerridge v. Hesse*, 9 Car. & Pay. 200.

THE BANKRUPTCY AND INSOLVENCY COMMISSION.

No. V.

THE Commissioners then propose the union of the Courts by which the laws relating to Bankrupts and Insolvents are now administered.

"It appears to us that to unite the jurisdictions in matters of bankruptcy and insolvency would, upon principle, tend much to benefit the public, but this benefit cannot, we think, be obtained without placing all insolvent estates under the administration of one uniform system of law. We can perceive no good reason why the estate of one debtor who is unable to pay his debts in full, should be administered in a different manner from that of another debtor under the same disability. All such estates should, in our opinion, be administered in some one mode which is best adapted to

secure the interests of creditors by the examination of the debtor's accounts, and the discovery and distribution of his property. The system of the bankrupt law, with the alterations and further remedies which we have humbly suggested to your Majesty, is well adapted to these purposes; but so long as debtors having no assets are liable to be imprisoned, (and many thousands are imprisoned every year), it is practically impossible to administer such cases under a law requiring rigorous investigation of accounts, regular proof of debts, with audits, and other proceedings, the expense of which could not be defrayed in cases where there is no property for distribution except by the aid of a further public grant, in addition to that hitherto voted for the maintenance of the Court for the relief of insolvent debtors. Anxious, therefore, to reconcile the superior advantages which we attribute to one uniform system of law applicable to all classes of insolvent debtors, with due regard to public economy, we must necessarily advert to the law of imprisonment for debt, its policy, and practical results.

"Upon this subject, a report was made to his late Majesty, in the year 1832, by commissioners appointed to inquire into the practice and proceedings of the Superior Courts of Common Law.

"This report contains a general view of the law of England on the subject of arrest and imprisonment for debt on mesne and final process; of the principal changes which that law has undergone, and the opinion of the commissioners on its effect; a statement of the comparative advantages and disadvantages which, in their judgment, would result from taking away or retaining the power of arrest on mesne and final process, or either of them, and from adopting the further remedies recommended.

"The subject matter of this report has been, at different times, under the consideration of the legislature. Some of the recommendations have been lately carried into effect, and arrest on mesne process (except in cases where there is probable cause for believing that the debtor is about to quit England) is no longer part of the law.

"Our attention, therefore, is now confined to Arrest on final process.

"Having considered with much attention, the report of the learned commissioners before referred to, and what has passed in parliament upon this subject, together with the evidence and returns brought before us, and paying all due regard to past experience, we concur in the opinion expressed in the report of those commissioners, and we cannot state our opinions better than in the language of that report:—"The principle of the present law is, to do justice by the use of the strong and compulsory means of arrest and imprisonment applied indiscriminately. The system has been found to be productive of so much hardship and injustice, that it was at last deemed to be necessary to mitigate its consequences by the enactment of the insolvent law. The joint

operation of the two opposite processes, for the imprisonment and enlargement of debtors, has been productive of so much evil, as to lead to the suspicion, which seems to be fully verified by inquiry, that the mischief ought to be obviated, not by provisions designed for the mere mitigation of its consequences, but by removing its cause, that is, by limiting the power of imprisonment itself, and confining it to cases where it is warranted on the plain and just principle of preventing the debtor from fraudulently absconding, or removing his property beyond the reach of justice, or for the punishment of actual fraud, or compelling the debtor, after judgment, either to pay the debt, or to make a cession of the whole of his property for the benefit of his creditors. Beyond this, we believe that the practice of imprisonment for debt is neither warranted in principle nor beneficial in practice; and that on the contrary, whilst the exercise of the present almost unlimited power is productive of pecuniary loss, injury and distress to creditors as well as debtors, it also occasions great moral evils in its tendency to subdue that proper degree of pride and honest feeling which is inconsistent with the degradation of imprisonment in a gaol, and to level the distinction between guilt and misfortune.'

"We are of opinion that this language applies with the greatest force to arrest on final process.

"The arrest of a debtor who is wholly insolvent is of no direct use whatever; and of this nature are the greater number of arrests in execution. An honest debtor who can pay, will do so before the costs of an action are added to his debt; or if he be under temporary difficulties, and have his liberty, he will exert himself to procure the means of payment. A dishonest debtor, will probably avail himself of the facility which the laxity of the present law affords him to dispose of his property before the hostile creditor is able to seize it.

"Again: the commissioners say, 'The practical effect of the law of arrest on final process, combined with the insolvent law, is the imprisonment of numbers merely to be discharged without opposition at the end of a few weeks; the consequence is misery, waste of funds, and multiplied frauds and prejuries; whilst no benefit arises to the creditor, the arrest, imprisonment, and expense, are ruinous to the debtor; in short, the ordinary consequence is, disappointment and loss to the creditor, destruction to the debtor.'

"That this has also been the case since the abolition of arrest on mesne process, is most fully borne out by returns which have been produced before us.

"Deducting 361 who were remanded, from the 1,147 who were opposed, it would appear that 786 were opposed without sufficient grounds; then, adding these 786 to the 2,758 who were discharged unopposed, it would appear that out of 3,905, the whole number imprisoned, 3,544 were imprisoned who ought not in good policy to have been imprisoned at all, for the imprisonment of those persons pro-

duced no legitimate advantage either to the creditors or to the community.

"The indiscriminate imprisonment of judgment debtors, as justly observed in the report referred to, 'is inconsistent with the very principle on which the insolvent law is founded.'

"One of the great objects of the insolvent law is, to discriminate between the honest and the fraudulent, in order to the relief of the former and the punishment of the latter. This is to a great extent, if not altogether, frustrated by indiscriminate imprisonment. It is a general maxim of the law of England that fraud is not to be presumed; on this the practice of the insolvent law is founded, the prisoner is not called upon to defend himself until a charge has been adduced against him. In the absence of any proof of fraud he is liberated: the same principle, we conceive, ought to protect him from imprisonment. We know not upon what rule or maxim of the law of England any one ought to be imprisoned where no criminal act or omission is charged against him.

"Nor does the common law of England sanction any such principle. Upon the statute of Westminster 2d, c. 18, Lord Coke observes that, at the common law, where a subject sued execution upon a judgment for debt or damages, he should not have the body of the defendant, or his land in execution (unless it were in special cases), and the reason of the law was, that the body in case of debt should not be detained in prison, but be at liberty, not only to follow his own affairs and business, but also to serve the king and his country when need should require; and taking away the possession of his lands would hinder his following his husbandry and tillage, which is so beneficial to the commonwealth.—Co. 2 Inst. 394."

"The loss incurred by creditors in consequence of imprisoning their debtors is very great: out of 3,905 cases before-mentioned, dividends were paid only in 199, and 361 were remanded, whilst in the remaining 3,345 cases, the costs of proceeding to judgment, taken at the estimate of 20*l.* for each action (which would be a low estimate for actions in the Superior Courts), would have amounted to 66,900*l.* It appears that the minimum expense attending the discharge of an insolvent is, five guineas, and if six pounds be taken as a low average, 20,070*l.* would have been expended by the 3,345 debtors above mentioned in procuring their discharge; adding this to the 66,900*l.* expended in putting them into prison, 86,970*l.* would appear to have been unprofitably consumed, in the above period of fourteen months."

"Nor is the loss to the community confined to this pecuniary sacrifice. Two months at least may be considered as the average time of the confinement of such debtors. The debtors themselves, while in gaol, can produce nothing. They and their families may be, and for the most part are, deprived of the means of subsistence, and must be supported by their parishes, or by the labour of friends generally ill able to bear such additional burthen, and who may, by this exercise of their charity, risk

their own ultimate solvency. The expense to the public of the support of prisons, and to parishes of the maintenance of prisoners, is a secondary but not unimportant consideration, while the confusion of ideas between crime and misfortune, by seeing the felon and the debtor imprisoned under one roof is calculated to produce much moral evil. Thus a large sum of money and a considerable portion of time, which ought to have been available to the purposes of national industry, is annually consumed without producing any good result whatever.

"It has been argued, that if the power of arrest in execution be taken away, the creditor will be much more frequently defeated by the concealment of the debtor's property.

"To this it may be answered, that the present state of the law affords no effective means of discovering the debtor's property, except in particular cases, and that the object of the law should be to afford such means of discovery by a direct, and not an indirect process.

"That imprisonment does not, in fact, reach or discover property in the great majority of cases which come before the Insolvent Debtor's Court, is manifest from the returns which we have already stated to your Majesty, by which it appears that, in about ninety-five cases out of every hundred, no dividend is paid to the creditors; and that, in about eighty-six cases out of every hundred, not only is no dividend paid, but the prisoners are adjudged entitled to immediate relief.

"It has been urged that, if the power of arrest in execution be taken away, the debtor without property will have no inducement to make those efforts by which he now often succeeds in obtaining the means of payment.

"To judge of this, it must be considered what are the efforts by which a debtor without property can speedily obtain the means of payment? and they will be found to be:—

"By contracting new obligations by way of loans, or by importuning contributions from friends or relations: by purchasing goods on credit to be sold always at a loss in order to raise ready money: by discounts, the exorbitance of which will be proportioned to his distress: by postponing prior or equal claims, or other means ruinous to himself and injurious to his creditors.

"It has been further urged that, if the power of arrest in execution be taken away, the burthen and risk of realising the property of the debtor will be constantly thrown upon the creditor, instead of being incumbent upon the debtor himself.

"If it be desirable to leave the realization of his property to the debtor, we think he will effect it more profitably when at liberty than if confined within the walls of a prison.

"Again it has been urged that the abolition of arrest in execution will encourage the practice of contracting debts improvidently, or with the direct purpose of defrauding the creditor, and will also encourage the debtor to dissipate property which ought to be applied to the payment of his debts.

"Our observation leads us to a different conclusion. We believe that, with the improvident, the sanguine, and the speculative, the distant contingency of imprisonment in execution has little influence; with the fraudulent, the probability that the creditor will not incur the expence and vexation of following out his ultimate remedy, the chance that the Insolvent Court will not discover his frauds, and the certainty that a very limited imprisonment, unaccompanied by penal restrictions, will be the utmost extent of his punishment, form essential ingredients in his calculation that he may incur debt with impunity.

"It has been observed by a committee of the House of Commons, in their report on the subject of imprisonment for debt, that to debtors of the worst description a prison is no punishment; on the contrary, such persons find an interest, or gratification, in remaining in a situation so full of misery to the honest.

"It need scarcely be added that, with respect to the honest debtor, imprisonment is worse than useless, as it deprives him of the only legitimate means of discharging his debt by the exercise of his own labour and industry.

"We are, therefore, of opinion that the power of arrest in execution is ineffectual for the protection of the creditor, by way either of remedy or as a preventive.

"The baneful and pernicious effects of imprisonment for debt, on those persons who become the object of its infliction, are well and truly described in the report to which we have so often before referred, and to which we humbly beg to draw your Majesty's attention.

"If a debtor be once consigned to a gaol, his fate may usually be considered as decided. Cut off from his business, his family, his home, deprived of the means of honest exertion, shut up in a gaol, his affairs, if bad before, are now become desperate, whilst confinement impairs his health, a sense of degradation weighs down his mind; and whilst he is tempted to raise his sinking spirits by temporary dissipation, amongst depraved associates, he becomes bankrupt in morals as well as estate. For proofs of the cruel and afflicting sense of degradation felt by many of those unfortunate persons, who have been subjected to imprisonment for debt, and of the conviction that such imprisonment fixes an indelible stain upon their future character, as well as of the pernicious effects of such imprisonment on the habits and morals of prisoners, we have referred to the sources from which such information may best be derived—the statements of prisoners themselves and of gaolers who have had them in custody.

"This view of the subject is fully confirmed by the keeper of Whitecross Street prison, who was examined before us. The Whitecross Street prison is the prison for debtors for the county of Middlesex, and receives prisoners as well from the Superior Courts, as from those of a limited jurisdiction. The evidence before the commissioners on Courts of Common Law, relating to the imprisonment of debtors in Whitecross Street prison from courts of request, shows that the effect of that

imprisonment is to throw a large expense on the county, to render useful men idle, to induce habits which destroy their usefulness, and make them pests to society and burthens to the public. One of the first results of the committal to that prison is, that their families go on the poor rates. The amount of debt is paid four-fold by the parish during the confinement of the heads of those families, and the creditors very seldom obtain payment. The necessary effect of being so confined, the keepers say, is that, after a few days, the debtors begin to feel the contaminating influence of the society in the prison. There are in the prisons individuals connected with the law, who having been disgraced and fallen from their station, instantly take pains to become acquainted with every new-comer, with a view to teach him how to defraud his creditors; the result is, that debtors who really had the inclination, but wanted the means to satisfy their debts, are led to form a determination not to pay even if they should be able, but rather to remain in prison for the number of days that the law affixes as a penalty. This contamination is one of the causes of the demoralization of the lower classes in the metropolis, and of preparing for crimes which swell our criminal calendar.

"We think that by taking away a fancied and generally delusive security, and throwing the creditor more on his own caution in giving credit; by providing prompt, efficacious, and cheap means for the recovery of debts, the discovery of the property of debtors, the punishment of the dishonest and fraudulent debtor, and the relief of the honest but unfortunate, most effective aid will be afforded to the trading part of the community, the unwary will be deterred from the first steps of improvidence, and a wholesome and sound state of credit will be preserved.

"We concur with the Common Law Commissioners in the opinion, 'that the personal appearance of the debtor for all the purposes of examination, of inquiry, and of punishment, in case of fraud, ought to be secured; and that these objects may be successfully attained by actual imprisonment or requiring bail, in case of fraud, and by imposing penalties on those who shall neglect to appear.'

"We think it convenient here to state, that we agree with the Common Law Commissioners that all property which may be distributed under the bankrupt law should be available in execution.

"The delay which necessarily takes place in procuring from London an order of a judge of one of your Majesty's Superior Courts, to hold to bail a defendant who is about to quit England, has been found by experience to be injurious to creditors. The possibility of obtaining an immediate authority for apprehending a debtor, where there is probable cause for believing that he is about to quit England, is much wanting, particularly in the maritime counties. We think, therefore, that the power which is now vested in the judges of your Majesty's Superior Courts at Westminster, to

order defendants to be arrested in certain cases, should be extended to judicial functionaries in the country.

"We are also of opinion, that in order to enable a judgment creditor to make his execution available, he should have power to summon his debtor, or, if in custody, to have him brought up, for the purpose of examining him as to his property.

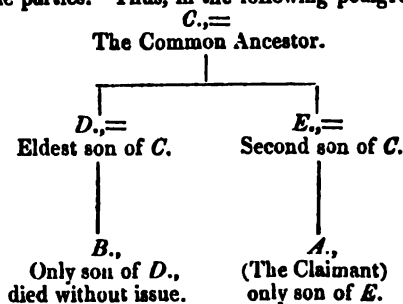
"We conclude these observations on the subject of imprisonment for debt in execution, as it affects all members of society with the strongest recommendation of its abolition, and with the fullest conviction that this may be safely and advantageously conceded, if accompanied with the further remedies for creditors against the property of debtors, which we have humbly suggested to your Majesty."

LAW AND PRACTICE OF EJECTMENT.—No. IV.

EVIDENCE.

It may be useful to collect the principal decisions relating to the evidence adduced in actions of ejectment. We shall first, however, state the general rules applicable to the proof of a *title by descent*; and then class the decisions under such appropriate heads as may be convenient for reference.

A party who claims lands by descent in an action of ejectment, should prove at the trial that the ancestor from whom he derives his title was last seized of the lands in question in fee simple; *Jenkins d. Harris v. Pritchard*, 2 Wils. 45; and next, he must shew that he, the claimant, is the heir of such ancestor. The seisin of the ancestor may be proved by shewing that he was either in the actual possession of the premises at the time of his death, or in the receipt of rent from the tenant. The plaintiff, claiming as *lineal* heir, must prove his descent from the person last seized, or the descent of himself and the person last seized from some common ancestor. *Roe d. Thorne v. Lord*, 2 Bla. 1099. If he claims *collaterally*, he must also prove the extinction of those lines of descent which would claim before him. This is done by proving the marriages, births, and deaths, and shewing the identity of the parties. Thus, in the following pedigree:



A. must prove the marriage of *C.*; the birth and marriage of *D.*; the birth, marriage, and death of *E.*; the birth and death without issue of *B.*; and his own birth. 2 Blk. Comm. 208, &c.; *Wilson v. Hodges*, 2 East, 312.

The production of extracts from parish registers, and the testimony of persons who knew the parties and the facts, are the most satisfactory modes of proof. When the party claims as collateral heir, and it is necessary to trace the relationship between him and the person last seised through many descents to a common ancestor, difficulties often intervene from the remoteness of the period to which the inquiries must be directed. The Courts, from the necessity of the case, have relaxed the ordinary rules, and allow hearsay and reputation to be admitted as evidence. *Higham v. Ridgway*, 10 East, 120.

Hearsay evidence.—The declarations of deceased members of the family are admissible to prove who was the grandfather of the party, when he married, and whom he married, and his children. So also the declarations of deceased persons, regarding their own marriage, and the birth of their children; *Vowels v. Young*, 13 Ves 148; *Doe d. Northey v. Harvey*, 1 R. & M. 297; *May v. May*, Bul. N. P. 112; *Rex v. Luffe*, 8 East, 193; but the declarations of deceased neighbours, or of the intimate acquaintances or servants of the family are not evidence. *Vowels v. Young*, 13 Ves. 147, 314; *Rex v. Inhabitants of Eriswell*, 3 T. R. 707, 723; *Weeks v. Sparke*, 1 M. & S. 688; *Johnson v. Lawson*, 2 Bing. 90; *et vide* 14 East, 330. To entitle the declarations of a deceased relative to be admitted, they should be made when such relation may be presumed to speak *without an interest or bias*, either preparatory to or pending a suit. See *Berkeley Peerage Case*, 4 Camp. 401. The declarations of a deceased occupier of land, stating of whom he held the land, are evidence of the seisin of that person, but it must be shewn that the land the deceased occupied was the land now in the tenant's possession. *Peaceable d. Uncle v. Watson*, 4 Taunt. 16; and see *Doe d. Daniel v. Coultherd*, 7 A. & E. 235.

Evidence by reputation.—The death of a person without issue, may be presumed by the fact being commonly reputed in the family. *Doe d. Banning v. Griffin*, 15 East, 293; *Doe d. Oldham v. Wolly*, 8 B. & C. 22.

Reputation has been held good evidence of a marriage, in an action by an heir, though his parents, whose marriage was the subject in dispute, were both living. *Doe d. Fleming v. Fleming*, 4 Bing. 266.

Entries in family Bibles and other books may likewise be received in evidence. *Whitlocke v. Baker*, 13 Ves. 514. So also recitals in family deeds, monumental inscriptions, engravings on rings, old pedigrees hung up in a family mansion, and the like. *Vowels v. Young*, 13 Ves. 148.

The original visitation books of heralds, compiled when progresses were solemnly and

regularly made into every part of the kingdom to inquire into the state of families, and to register such marriages and descents as were verified to them on oath, are also allowed to be good evidence of pedigrees; 2 Sel. N. P. 772; but a recital in an act of parliament, stating J. S. to be heir at law to a particular person, has been held not to be evidence. *Anon.* 12 Mod. 384.

The presumption of the continuance of human life ends in general at the expiration of seven years from the time when the person was last known to be living; 19 Car. 2. c. 6, s. 1; *Doe d. George v. Jesson*, 6 East, 80; *Rowe v. Hasland*, Blk. 404; but such death may, under particular circumstances be presumed in a shorter time; as where a party sailed in a vessel which was never afterwards heard of; *Watson v. King*, 1 Stark. 121. Proof also of the fact that a tenant for life has not been seen or heard of for fourteen years, by a person residing near the estate, is *prima facie* evidence of his death. *Doe d. Lloyd v. Deakin*, 4 B. & A. 433.

Where the landlord defends.—Where the defendant comes in as landlord, it is necessary to show that he is in the receipt of the rents and profits of the premises to which the lessor of the plaintiff makes title, or that the declaration in ejectment was served upon the tenant in possession of the premises. *Fenn d. Phillips v. Conke*, 3 Camp. 512; and see *Doe d. Schofield v. Alexander*, 3 Camp. 516.

So, where the landlord is made defendant, the plaintiff must prove the defendant's tenant to be in possession of the premises in question. *Smith d. Taylor v. Mann*, 1 Wils. 220.

Where there are several demises.—The plaintiff in ejectment, under the several demises of two, may, after notice to quit, recover the possession of the premises held by the defendant as tenant from year to year, upon evidence that the common agent of the two had received rent from the tenant, which was stated in the receipts to be due to the two lessors; even assuming such receipts to be evidence of a joint tenancy; for a several demise severs a joint tenancy; and supposing the contract with the tenant to have been entire, no objection lies on that account to the plaintiff's recovery in this case, as he had the whole title in him. *Doe d. Marsuch v. Read*, 12 East, 57.

In ejectment on several demises of two persons, although the evidence shows the title to be exclusively in one of them, the other cannot be compelled to be examined as a witness for the defendant. *Fenn d. Pectrius v. Grainger*, 3 Camp. 177; and see *Doe d. Rowlands v. Wainwright*, 3 N. & P. 598.

Proving possession.—Where a defendant, on being served with a declaration in ejectment, assented to the character of tenant in possession, and afterwards appeared and pleaded: it was held that it was quite sufficient evidence for a jury to find that he was the tenant in possession, although it also appeared that he was

in the situation only of a servant, and managed the business for the real owner on the premises. *Doe d. James v. Stanton*, 2 B. & A. 371.

The lessor of the plaintiff in ejectment is bound at the trial to prove the defendant in possession of the premises which he seeks to recover, although the defendant has entered into the general consent rule to confess lease, entry, and ouster, if the defendant contest his possession. *Goodright d. Balch v. Rich*, 7 T. R. 327.

In ejectment for a house, the land-tax assessment of the parish, in which the collector of taxes charges himself with the receipt of money from A. B., as tenant of a particular house, is evidence that the latter was tenant at that time. *Doe d. Smith v. Cartwright*, 1 C. & P. 218; and see *Doe d. Harrison v. Murrel*, 3 C. & P. 134.

Mines.—In ejectment for mines, evidence of being lord of the manor is not sufficient, for it is necessary to show an actual possession of the hereditament in question; and, for the same reason, a verdict in trover for lead dug out of the mine is no evidence, for trover may be brought on property without possession. *Cullen v. Rich*, Bull. N. P. 102.

Identity of premises.—In ejectment for a house, to show that it is situate in the parish mentioned in the declaration, it is *prima facie* evidence that the place in which it stands is watched by the watchman of that parish. *Doe d. Gunson v. Welch*, 4 Camp. 264.

Nonpayment of rent.—Upon a clause of re-entry in a lease on non-payment of rent against the assignee of the lease; proof by the lessor of the counterpart of the lease by the subscribing witness, is sufficient proof of the holding upon the condition of re-entry in case of non-payment of rent. *Roe d. West v. Davis*, 7 East, 363.

To recover premises forfeited for non-payment of rent, a difference between the amount of rent proved to be due, and the amount demanded in the lessor of the plaintiff's particular is not material. *King d. Gibbs v. Moody*, 3 Bing. 3.

Under a proviso in a lease for the entry of the landlord in case the rent should be in arrear for fourteen days, and no sufficient distress found upon the premises, he is entitled to recover on proof of half a year's rent due at Lady-day, and no distress on the premises on some day in May, the demise being laid on the 2nd of May, and the declaration served on the 6th of June; the defendant giving no evidence to rebut the inference that there was no sufficient distress on the premises in May, up to the day of the demise inclusive, or on the 6th of June, when the declaration was served, if that were material with reference to the statute 4 G. 2. c. 28. On such proof by the plaintiff, the Stat. 4 G. 2. c. 28, dispenses with proof of a demand of the rent on the day it became due. *Doe d. Smelt v. Tuchan*, 15 East, 286.

Non-performance of covenant.—To support an ejectment on a forfeiture of a lease, by non-performance of a covenant, if the covenant be

to do an act, the lessor of the plaintiff must give some evidence of the omission of the act; and if the covenant be for payment of rent, the lessor of the plaintiff must prove a demand of such rent. *Doe d. Chundless v. Rolson*, 2 C. & P. 245; and see *Doe d. Bridge v. Whitehead*, 2 N. & P. 557.

Assigning without consent.—Where there is a right of entry given for an assigning or underletting, if a person is found in the premises, appearing as the tenant, it is *prima facie* evidence of an underletting sufficient to call upon the defendant to show in what character such person was in possession as tenant, or as servant to the lessee. *Doe d. Hindly v. Kickerby*, 5 Esp. 4.

But it is not sufficient to prove the defendant a stranger in possession of the demised premises, and his declaration that they were demised to him by another stranger. *Doe v. Payne*, 1 Stark. 86.

And such evidence would not be sufficient, even if the tenant had covenanted not to part with the possession. *Id.*

Outstanding term.—Under certain circumstances the jury may presume a satisfied term to have been surrendered to the *cestui que use*; but if no such presumption be made, and it appears in a special verdict in ejectment that such a term is still outstanding in a trustee who is not joined in bringing the ejectment, the *cestui que use* cannot recover. *Goodtitle d. Jones v. Jones*, 7 T. R. 47.

Mortgage.—Annuity—The counterpart of a lease, purporting to have been executed by a lessee of a lease granted by the mortgagor, in conjunction with the mortgagee of certain premises, cannot be read in evidence against one who derives title under the mortgagee without some evidence of the execution of the original lease, (which has been lost) by the mortgagee. *Doe d. Clark v. Trapaud*, 1 Stark, 281.

But proof that the original lease was signed by the mortgagor, the subscribing witness not being known, would be sufficient to warrant the reading of the counterpart. *Id.*

A mortgagee conveyed the legal estate to the mortgagor by deed, on being paid the mortgage money, and the latter re-conveyed it to trustees, for the purpose of securing an annuity. At the time of the execution by the mortgagee, there were several blanks left in the deed, but not in that part which affected him. The blanks left were merely for the sums to be received by the mortgagor from the grantees of the annuity, which were all filled up at the time of the execution of the deed by the mortgagor; but several interlineations were made in that part of it after the execution by the mortgagee: It was held that it was not incumbent on the plaintiff in ejectment, brought on this deed, to prove that the annuity was duly enrolled. *Doe d. Lewis v. Bingham*, 4 B. & A. 672.

In ejectment upon the assignment of a term to secure an annuity, a proper memorial of the annuity deeds will be presumed, till the contrary be shown. *Doe d. Griffin v. Mason*,

3 Camp 7; and see *Pool v. Warren*, 3 N. & P. 623; *Doe d. Orchard v. Stubbs*, 6 N. & M. 957.

Rectory.—A rector may recover against his lessee, on the ground of the lease of the rectory being avoided on account of his own non-residence, by force of the stat. 13 Eliz. c. 20, and the lease to the defendant, describing him as a doctor in divinity, produced by him at the trial in support of his title, is *prima facie* evidence of his being such as he is therein described to be, so as also to avoid the lease under the stat. 21 Hen. 8. c. 13. s. 3. *Frogmorton d. Fleming v. Scott*, 2 East, 467.

The institution of a party to a living, reciting the cession of his predecessor followed by indenture, is sufficient evidence to support an ejectment, though the predecessor is shown to have been in possession, and no other evidence of his cession is given. *Doe d. Herley v. Carter*, 1 R. & M. 237.

In an action of ejectment to recover rectorial tithes, a claim adverse to that of the plaintiff may be set up on the trial by calling the person who claims as heir at law, who is a competent witness, the verdict not being available in the witness's favor. *Doe d. Bath v. Clark*, 13 L. O. 443.

By an executor.—In an action by an executor, it is sufficient *prima facie* evidence that the testator had a chattel interest in the premises, to put in the defendant's answer to a bill in equity, stating, "he believed the testator was possessed of the leasehold premises in the bill mentioned." *Doe d. Digby v. Steel*, 3 Camp. 115.

By a devisee.—In ejectment by the devisees of copyhold premises, to prove the admission of the lessors of the plaintiff, it is not only necessary to prove by the Court rolls that persons of their names have been admitted, but evidence must be given of their identity. *Doe d. Hanson v. Smith*, 1 Camp. 196; and see *Doe d. Bowdler v. Owen*, 3 C. & P. 97.

Purchase under execution.—A lessor in ejectment, who claims title as a purchaser from the sheriff, who sells by virtue of *feri facias* at the suit of such lessor, must prove the judgment as well as the writ. *Doe d. Bland v. Smith*, 2 Stark. 199; *Hoffman v. Pitt*, 5 Esp. 22.

In ejectment by the vendee of a term sold under a *fi. fa.* against the defendant in execution, it is sufficient to produce the *fi. fa.*, without proving a copy of the judgment. And where it appeared that the term had been granted to defendant's father, and that on his death, intestate, his son, *A. B.*, entered and took administration, and was possessed till his death, and that on his death, defendant, his brother, entered, and that by indenture between defendant and *B. M.* (concerning other premises) it was recited that defendant was legal personal representative of *J. B.*: it was held this was *prima facie* evidence that the term was vested in defendant. *Doe d. Batten v. Murles*, 6 M. & S. 140.

Bankrupt and Insolvent Debtors.—In ejectment against the assignees of a bankrupt, proof that on their being required to give

up possession of the premises, they answered that it was not consistent with their duty to do so, is sufficient evidence of their possession. *Doe d. Radnor v. Taylor*, 2 Stark. 535.

It is not necessary to produce an original order for the discharge of one insolvent debtor, under the statute 1 Geo. 4, c. 119, s. 4, for the purpose of proving the title of his assignee, to maintain an action of ejectment as such. *Doe d. Ibbotson v. Land*, 3 D. & R. 509.

Where *A.* claimed to hold lands under *B.* as a security for a debt: Held, that he could not defend an ejectment by the assignees of *B.* after his bankruptcy, on the ground that the grant under which *B.* derived his title from the crown was void. *Doe d. Biddle v. Abrahams*, 1 Stark. 305; and see *Doe d. Plevin v. Brown*, 7 A. & E. 447.

Execution of Deeds and Wills.—The attesting witness to a deed stated that the signature was his hand-writing, though he had no recollection of the transaction; but that he should not have signed the attestation if he had not seen the deed executed, this was deemed sufficient. *Doe d. Counsell v. Caperton*, 9 C. & P. 112.

Where the subscribing witness to an instrument has become blind, the instrument cannot be proved without calling him. *Crank v. Firth*, 2 M. & R. 252.

An unproved will, more than thirty years old, coming from the possession of one of the family of the testator, may be read without accounting for the subscribing witnesses, though the person producing it be not strictly entitled to the custody. *Doe d. Wildgose v. Pearne*, 2 M. & R. 240; 5 M. & W. 506.

A will was attested by the signature of one witness, and the marks of two others. All were dead. The signature of the one was proved, and the daughters of the others proved their death, and that they lived near the testator, and no other person of the same name lived in the neighbourhood; that one of them could not write, and the other could write his name only. This was held to be sufficient. *Doe d. Counsell v. Caperton*, 9 C. & P. 112.; and see *Doe d. Bowdler v. Owen*, 8 C. & P. 110, 751; *Mudd v. Scouthernmore*, 5 A. & E. 703.

Who are competent witnesses.—A tenant in possession is not a good witness to support his landlord's title; because it is to uphold his own possession. *Doe d. Foster v. Williams*, Cowp. 621; *Doe d. Winchley v. Pyne*, 1 Esq. 364.

No, in ejectment against a bailiff, the tenant in possession is not competent to prove that the witness, and not the defendant, is the possessor of the land. *Doe d. Jones v. Wildes*, 1 Marsh. 7; 5 Taunt. 183.

But where, in covenant for rent upon a lease by two, the point in issue was whether a third person (whose title both admitted), had demised first to one of the lessors, or to another, that person is competent to prove the point in issue. *Bell v. Harwood*, 3 T. R. 308.

Where a witness on the *voir dire*, stated

"that the lessor of the plaintiff had formerly assigned the premises in question to him, for the purpose of protecting him from impressment; that he had given back the deed to the lessor of the plaintiff, and never seen it since; and that he never had any possession or beneficial interest in the premises." Held, that he was incompetent, as he had a direct interest in supporting the plaintiff's action. *Doe d. Scales v. Bragg*, 1 R. & M. 87.

In ejectment by an heir at law to set aside a will for fraud and imposition practised by the defendant, witnesses will not be allowed to speak to his general good character. *Goodright d. Faro v. Hicks*, Bull. N. P. 296.

In ejectment by a party claiming an undivided interest in an estate under a will,—the question in the cause being the competency of the testator,—a person claiming another undivided interest in the same estate under the same will, is a competent witness for the lessor of the plaintiff. *Doe d. Wildgoose v. Pearce*, 5 M. & W. 506; and see *Willis v. Birchmore*, 1 P. & D. 448.

Practice at the trial.—When the lessor claims as heir and proves his pedigree and stops, and the defendant sets up a new case, which is answered by fresh evidence on the part of the lessor, the defendant is entitled to the general reply. *Goodtitle d. Revet v. Braham*, 4 T. R. 497. And if, after the pleadings are opened by the junior counsel for the lessor, the defendant's counsel expresses himself ready to admit the lessor to be the heir, it will entitle him to open the case, and make the first address to the jury. (So ruled by *Le Blanc*, in *Fenn d. Wright v. Johnson*, Nottingham Summer Assizes, 1813; and by *Wood*, B., in a subsequent ejectment between the same parties, Nottingham Lent Assizes, 1814.) See Adams on Ejectment.

LAW OF ATTORNEYS.

Our last Analytical Digest of all the Cases reported in all the Courts during the preceding three months contains the following points, to which it may be well to call the attention of our readers:

Privilege of Attorney.

"An attorney, duly admitted to practise in the Supreme Court of Prince Edward's Island, having been arrested ou mesne process, claimed his privilege, which was allowed him; but an *ex parte* order was made at the same time by the Chief Justice, suspending him from practising in that Court, upon grounds stated therein, but not supported by any evidence. The original order, and the affidavit made on the motion for discharge, having been transmitted from the Supreme Court, the Judicial Committee rescinded the order, on the ground of irregularity. *In re Monckton*, 1 Moore, 455.

"To subject an attorney to the summary

jurisdiction of the Court, it must appear either that he is an attorney of the Court, (having signed the roll) or that he has acted as such. An attorney in the country to whom a writ of summons and notice of declaration were transmitted for the purpose of serving, afterwards became the attorney for the defendant in the cause: Held, that his employment for the plaintiff was not such as to constitute him his attorney and render him summarily amenable in that character. *Cole v. Grove*, 1 Scott, N. S. 30."

Changing Attorney.

"If the relator of a *quo warranto* information and the defendant employ the same attorney, the Court of Q. B. will make a rule absolute to change the attorney for the prosecution, although there be no collusion between the parties, and the attorney intended to proceed *bond fide* to obtain the judgment of the Court. *Reg. v. Alderson*, 3 P. & D. 2."

Examination.

"A candidate for admission to practise as an attorney having failed, on examination, to satisfy the examiners, the Court of Q. B., under particular circumstances, made an order that, if, on re-examination in the next term, he should obtain his certificate, he might be admitted without having given a fresh term's notice under Reg. Gen. Hil. 6 W. 4. *In re Examiners of Attorneys*, 9 A. & E. 728.

"The Court of Q. B. will, under special circumstances, where an articulated clerk proposes to practise abroad only, allow him to be examined before the expiration of his articles. *Ex parte Twynam*, 8 Dowl. 293.

"Where an articulated clerk, in consequence of extreme illness at the time of his examination, has been unable to obtain his certificate, the Court of Q. B. will allow him to go again before the examiners without the usual notices. *Ex parte Grimestone*, 8 Dowl. 304."

Certificate Duty.

"In an action upon a bill of exchange, the consideration for which was business done by one *W.*, as the attorney and solicitor for the defendant, the acceptor, the latter pleaded that *W.* was admitted an attorney of the King's Bench and a solicitor in Chancery in 1810, but took out no certificate until 1813, when he first commenced practising; that he thence continued to practise, duly taking out his annual certificate, until 1820, when he ceased to practise and remained uncertificated; that he was re-admitted in the King's Bench in 1823, and neglected for more than a year to obtain a certificate; and that at the time the work in question was done, he had not been re-admitted in any of the courts of law except as aforesaid. The replication, admitting the facts stated in the plea, relied upon the subsequent admission of *W.* in the C. P. and in Chancery in 1826. And the rejoinder assuming that *W.* was *de facto* admitted in the C. P., as alleged in the replication, sought to avoid such admission in point of law by alleging it to have been "without payment of any

further duty in that behalf, according to the form of the statute in that behalf." Held, that the admission of *W.* in the Court of C. P. must be taken to have been an original admission; that there was nothing upon the face of the record to shew that such admission was void, and consequently that *W.* was not incapacitated from suing for fees earned by him whilst duly certificated under that admission. The nonpayment of stamp duty at the time of admission, though it may subject the party to penalties, does not render the admission void. *Middleton v. Chambers*, 1 Scott, N. S. 99: 1 M. & G. 97.

"An attorney who has obtained his certificate may carry on a suit between the fifteenth of November and the first day of Hilary Term in any year, without having entered the certificate; but if it is not entered before the expiration of that interval, he will be liable to a penalty. Therefore, where, to an action for work and labour as an attorney, the defendant pleaded that the plaintiff had not, during any part of the time when the work was done, obtained, or entered the certificate required by law authorizing him to practise; to which the plaintiff replied that he had duly obtained the certificate. On demurrer to the replication,—Held, that the plea was bad, as it did not shew that this was not done between the fifteenth of November and the first day of Hilary Term. *Semble*, that the plea would also have been bad on special demurrer, for alleging that the plaintiff had not the certificate "authorizing the plaintiff to practise" as an attorney. *Eyre v. Shelly*, 8 Dowl. 185."

Taxation.

"After action brought upon an attorney's bill containing any taxable item, the Court of Exchequer of Pleas will refer it to taxation, without requiring from the defendant an undertaking to pay the amount found on taxation to be due, or imposing any other terms upon him. *Williams v. Griffiths*, 6 M. & W. 32; S. C. 20 L. O. 207.

"A judge at chambers has jurisdiction to compel an attorney to pay the costs of taxation where more than one sixth has been taxed off his bill. *Sykes v. McClise*, 8 Dowl. 145.

"Upon a question of *quantum* of a petitioning creditor's debt, consisting of a bill of costs, the Court of Review has no power to inquire into the conduct of the solicitor in the proceedings out of which it arose, though alleged he had been guilty of gross neglect and misconduct. *Ex parte Southall, in re Southall*, 1 Mont. & C. 346."

Delivery of Bill.

"1. The insertion in an attorney's bill of items not particularized pursuant to the 2 Geo. 2, c. 23, s. 23, does not preclude him from recovering the residue of the bill, as to which the statute has been complied with.

2. The bill contained seven items charged in gross. The arbitrator, to whom the cause was referred, found that two of these only were for business done at law or in equity: Held, that

the plaintiff was entitled to recover in respect of the other five.

3. An aggregate charge for "extra costs" in a bill delivered by an attorney to his client, is not a sufficient compliance with the statute.

4. An attorney having several demands against his client, some of which were barred by the Statute of Limitations, and others not, claimed a right to appropriate in satisfaction of the earlier items a sum received on the client's account for damages recovered in an action: Held, that he had no such right.

5. The defendant had a claim against his attorney (the plaintiff) the amount of which was not ascertained. At the foot of his bill the plaintiff acknowledged the debt thus:—"By Mr. Lacy's bill,—" leaving a blank for the sum: Held, that this was a sufficient acknowledgment to take the defendant's claim out of the Statute of Limitations. *Waller v. Lacy*, 1 Scott N. S. 186; 1 M. & G. 54."

Re-admission.

"Where an attorney, seeking to be re-admitted, does not, in consequence of wrong information at the Master's Office, attempt to lodge his affidavit required by 6 Reg. Gen. H. T. 6 W. 4, until the afternoon of the first day of term, the Court of Q. B. will, if he applies promptly, allow him to file it *nunc pro tunc*. *Ex parte Norman*, 8 Dowl. 136.

"Where an attorney has practised during the period of his being off the roll, and he seeks to be re-admitted, he should, in his affidavit for that purpose, state that he has been off the roll, and not leave it to be stated by counsel. *Ex parte Miller*, 8 Dowl. 323."

Agents.

"Where a firm describe themselves on the back of a writ as the agents for another attorney, stated to be the plaintiff's attorney, it is no objection that one of the firm appears in the declaration as the attorney. *Armstrong v. King*, 8 Dowl. 297.

THE STUDENT'S CORNER.

VESTED LEGACY.—SURVIVORSHIP. r. 412, ante.

THE power of the deceased brother to bequeath his third share in the 8000*l.* would depend upon whether the legacy to him were vested or not; and it appears to me that he had a vested legacy, inasmuch as futurity is not made the substance of the gift, but the time of payment only is postponed until the happening of a certain event; and that, consequently, the bequest would be valid. See *May v. Wood*, 3 B. C. C. 471, and other cases cited in Vol. 10, Bythewood's Precedents by Jarman, pp. 172 and 173. Ormō.

In answer to the question, signed M. W. "where a party bequeathed 8000*l.* to a woman separately from her husband, and at her death to be divided amongst three of her brothers, who were younger than herself, nothing being

said in the will about any of them not surviving the sister," &c. [*Vide* p. 412.] I certainly agree with M. W., that there is no doubt about the brothers taking vested interests; but think that had there been anything mentioned in the will about the brothers not surviving the sister, that it would have been unnecessary and superfluous. This case, it appears, comes under one of the exceptions to one of the two positive rules of construction by which we are enabled to distinguish a vested from a contingent legacy, which entirely depends on the intention of the testator, by annexing the time to the payment of the legacy, or to the gift of it. The second of these two positive rules (to which this case is an exception) is, that if the words *payable* or *to be paid* are omitted in a bequest, and the legacies are given at twenty-one, or *if when in case of* or *provided* the legatees attain twenty-one, or any other definite period, these expressions annex the time to the substance of the legacy, and make the legatees' right to it depend on his being alive at the time fixed for its payment, consequently, if the legatee happens to die before that period arrives, his personal representative will not be entitled to the legacy. *Hanson v. Graham*, 6 Ves. 245. It would appear from this rule, that the personal representative of the brother that died would not be entitled. But there is an exception to this rule in Fearn's Contingent Remainders, 554, note, where it is stated, that where a person bequeaths a sum of money or other personal estate to one for life, and after his decease to another, the interest of the second legatee is vested, and his personal representatives will be entitled to the property though he dies in the lifetime of the person to whom the property is bequeathed for life. See also *Monkhouse v. Holme*, 1 Bro. C. C. 298; 1 Rep. Leg. 503, 3d edit. The case under consideration clearly comes under this exception, which only applies when the "corpus" is given. Had the interest only of the 8000*l.* been bequeathed to her for life, the brother's interest would have been contingent, and the share of the brother dying in the sister's lifetime would have gone to the residuary legatee. The statute 7 Will. 4, and 1 Vict. c. 26, s. 3, gives him power to will this interest; and the Statute of Distributions provides that if an intestate leaves children, and also a widow, one-third shall go to the widow and the residue among the children; and if there be no children or lineal descendants subsisting, a moiety shall go to the widow, and a moiety to the next of kin. S. S.

If the brother who died, survived the testator, no doubt he could dispose of his share of the legacy by his will. Where futurity is annexed to the *substance* of the gift, the vesting is in the meantime suspended; but where the *time of payment* only is future, the legacy vests *instantly*, and the death of the legatee, before the time of payment, will not affect his title. *Cloherly v. Lampen*, 2 Ch. Cas. 155; 2 Freem. 21; *Stapleton v. Cheele*, 2 Vern.

673; *Harvey v. Harvey*, 2 P. W. 21; *Jackson v. Jackson*, 1 Ves., sen., 217; and a striking instance, *Sidney v. Vaughan*, 2 B. P. C. Tomb. ed. 254. M. H. G.

SELECTIONS FROM CORRESPONDENCE.

ON THE RIGHT OF ADVOCATES.

Sir,

THE state of the feeling of the profession on this subject may be ascertained from Mr. D'Israeli's affair with Mr. Austin, which is fresh within our recollection; and about a month since, a *fracas*, at Cork, between a learned counsel and a gentleman, who thought himself unfairly handled, shewed that the profession and the public occasionally differ.

I would rather that advocates discharged their duty from considerations of moral justice than legal authority: if they rely on the former, they cannot do wrong; but if they are governed by the latter, they add injustice to injury, by inflicting a wound without affording an opportunity of redress. A brief allusion to the cases will prove that, at law, there is not the remedy which W. W. suggests (p. 378, *ante*). The decisions go thus far—that anything is allowable which is relative to the subject-matter of the case, *although too severe*. (*Wood, J.*, in *Hodgson v. Scarlett*.) Now, to decide what is or is not relative to the case, so as to protect counsel, in case of an action being brought against him, would be a very uncertain task; and if unjustifiable, where is the redress? Hodgson was called a *fraudulent and wicked attorney*: whether he was so or not was not a subject for the consideration of the jury; but the Court at once directed a nonsuit, on the ground that it was pertinent to the issue to abuse the plaintiff's attorney:—by *Buller, J.* (1 T. R. 110), "*the falsehood of the words is not material, but malice alone is a ground of action*." Now, that counsel frequently say what is false, cannot be doubted; that they entertain malice, I do not believe. Then it comes to this, that any person concerned in the cause may be assailed with false imputations, (and where can an attorney's character be more open to injury than in an Assize Court, before his brethren, the press, and the public?) and it is thoroughly impossible for him to obtain redress: if he attempts to vindicate his honour, *privilege* is pleaded, and a *criminal information* is his consolation. "If a counsel speaks scandalous words against one in defending his client's cause, an action lies not against him for so doing; for it is his duty to speak for his client, and it shall be intended to be spoken according to his instructions." (*Styles*, 462.) Nevertheless, there is not one client of a thousand who, on application for redress, as to the instructions he had given his counsel, would be but too happy to repudiate them. *Bayley, J.*, thought "freedom of speech was a client's and not a counsel's privilege;" and yet the advocate too often

says what his client dare not utter! Comyns states "that words which denote the opinion or suspicion of the speaker are not actionable:" therefore *Holroyd, J.*, laid down that counsel in his address to the jury might safely, as a matter of opinion, hold up the parties concerned as "fraudulent and wicked." Such is my construction of the law, which, I assert, affords no remedy, because *severe* expressions may be considered relative to the issue. It is surely beneath the dignity of the Bar to attempt to gain verdicts *per fas et nefas*, which we frequently witness at the assizes. In one case, an eminent Queen's Counsel imputed motives to a professional gentleman, without the slightest foundation, solely to *prejudice* the jury. In another, when I was he unfortunate witness, I shall not soon forget the abrupt, contemptuous, and insulting manner in which he asked me a question, when there was not the slightest occasion for digressing from ordinary courtesy or gentlemanly good-feeling. LEX.

MORTGAGE STAMPS.

A Correspondent, in answering an inquiry made by "A Country Solicitor," as to the proper stamps to be used on a transfer of mortgage *where there is a further advance*, "refers him to the case of *Doe dem. Bartley v. Grey*, 4 Nev. & Man. 719, wherein it was decided under 3 Geo. 4, c. 117, that in such a case the transfer stamp does not apply; that it is a new mortgage for the additional sum, and the progressive duty of 1*l.* is sufficient. Also to the case of *Doe dem. Barnes v. Roe*, 4 Bing. N. C. 737, where it was held that an *ad valorem* stamp upon the further sum was sufficient, without any deed stamp." May I be allowed to ask if the case of *Lamb v. Pearce*, 1 Will. Wooll. & Hodges, 271, decided later than either of the above cases, does not overrule them. ALIQUIS.

SUGGESTED IMPROVEMENTS IN THE LAW.

COSTS OF SERVING WRITS.

MAY I suggest to the tax-masters of the Common Law Courts how grossly unfair the allowance for the service of writs is to the profession? In the majority of cases several calls are made, and the time of a clerk engaged for days before a writ can be served, and a distringas is avoided in consequence of the difficulty and delay in obtaining it.

It appears to me that after the first call, if the clerk mentioned his object, and informed the person answering the door that he would make another call at an appointed time, and that such call would be attended with an extra expense of five shillings, there can be no objection to an allowance of five shillings for every additional call, if accompanied with an affidavit from the clerk of his belief in the necessity of such call for effecting the service.

I can see no reason why the Masters should not allow fair charges for all the devices and

contrivances that are frequently found necessary in serving a writ, provided the affidavit of service shews that they were absolutely necessary.

We all know how easily an experienced defendant may elude service, and give the greatest trouble to the plaintiff's attorney, without giving sufficient grounds for an application for a distringas; and, for all this trouble, we are only allowed five shillings for copy and service of writ in every case.

BRISTOLIENSIS.

SUPERIOR COURTS.

Rolls Court.

ADMISSION IN ANSWER.—PAYMENT OF MONEY INTO COURT.

Where there is a clear admission in a defendant's answer of a balance being in his hands, the Court will order it to be paid into Court, although the defendant may urge his right to apply it in liquidation of a claim which he has against the plaintiff.

Secus: if he qualifies his admission by shewing that he has actually applied it to another account subsisting between him and the plaintiff.

In this case a motion was made on the part of the plaintiff for the payment into Court of a sum of 2360*l.* alleged by the plaintiff to be admitted by the answer of the defendant to be in his hands belonging to the plaintiff. The bill was filed for an account of certain dealings and transactions between the plaintiff and defendant, and for payment to the plaintiff of any balance which might be found due from the defendant to him. It stated that the defendant had for several years acted as the agent of the plaintiff in the sale of timber and other articles; and that in December 1837 he admitted having in his hands 4820*l.* belonging to the plaintiff, which he promised to invest for the plaintiff's benefit, but which he had not done, and that the plaintiff was unable to effect any settlement of the accounts between them. The defendant in his answer alleged as the reason for his not settling with the plaintiff, that he had a large quantity of mahogany belonging to the plaintiff still remaining unsold, and he also stated that he had made various investments and had remitted various bills of exchange and promissory notes to the plaintiff, and that although there was a balance in his hands, relating to particular transactions, yet upon the general account a balance would be found due to him from the plaintiff.

Pemberton and Robertson, for the plaintiff. The only excuse raised by the defendant for resisting this application is, that he cannot sell the mahogany now in his hands, except at a great sacrifice, so that his argument is this:—"I cannot sell the mahogany, except at a sacrifice; I will not therefore sell it, and I will not settle the accounts until the mahogany is sold." The bill was filed the 24th of December 1839, and afterwards amended; and by his answer to the amended bill, filed

the 17th of July 1840, the defendant admits that he has in his hands 2360*l.* which he ought to have invested. The amended bill called for an account of all sums received by the defendant on account of the plaintiff, and the only answer given is an admission of the 2300*l.* The answer therefore, is liable to exception for insufficiency, and the defendant cannot take advantage of his own wrong in not setting forth a full account, by contending that the sum admitted to be in his hands ought to be applied to another account.

Kindersley and Collins for the defendant.—

Admitting there was not an investment according to the request of the plaintiff, that does not make it clear that a balance is due from the defendant. He might give the plaintiff to understand that he would invest; but, if he did not, and upon investigation of the accounts it turned out, there was nothing due, the defendant's saying he would invest does not make him liable. The simple question is, whether there is in the answer a sufficient admission to render him liable to bring the money into Court, which it may fairly be urged there is not. The accounts of the mahogany are not yet rendered, and a portion of it still remains unsold; and various passages are to be found in the answer which denied that on the whole accounts a balance would be found due to the plaintiff. The defendant also states, that generally upon all the accounts between him and the plaintiff, of late years, i. e., from 1834, there had been a balance in his (the defendant's) favour, and he has no doubt, that if the accounts were fairly and impartially settled, the plaintiff would be found indebted to him. The balance sought to be brought into Court, is only a sum which has arisen on the sale of a certain quantity of mahogany, whereas upon the trading account generally a large balance is due to the defendant. Can it then be said that until the whole account is settled, there can be such an unqualified admission of a clear balance that there is no doubt of its being eventually paid to the plaintiff?

Pemberton, in reply.—It is contended on the part of the defendant, that because there are accounts pending between the parties, the defendant is entitled to retain a balance admitted to be in his hands, although he has for two years on the most frivolous pretences refused to render his accounts. In his letter of December 1837, he says, he has invested 4820*l.* in consols, but that the books being shut he cannot send the transfer ticket. This investment was never made. Afterwards, in April 1838, he said that on the balance of the general account, he found there was 2400*l.* due to him, and deducting that from the 4820*l.* at the price of consols at that time, the balance remaining would amount to about the sum now required to be brought into Court.

The *Master of the Rolls*.—The question is, whether there is such an admission in the defendant's answer as entitles the plaintiff to call upon him to pay into Court the sum mentioned in the notice of motion. The defendant

was the agent of the plaintiff, and consignee of his timber, and was also employed by the plaintiff to purchase and invest certain sums of stock. On the general account there was a varying balance, and generally in his favour. In December 1837, he told the plaintiff he had invested 4800*l.* which he had not in fact done, but he afterwards stated, though he had not made the investment, yet that the plaintiff should have the same benefit as if he had. In July 1838 he states, that if the general account were taken, he should not have such sum to invest; but shortly before this he had received considerable consignments of timber, although he did not begin to sell them till August 1838. The proceeds of these amounted to 6660*l.*, the expenses to 4300*l.*, and the balance was the sum now sought to be brought into court. Considering the various modes of expressing himself resorted to by the defendant, there is much reason to believe, that the balance was as alleged by the plaintiff; but still the plaintiff is not entitled to have it brought into Court, unless there is a clear admission in the defendant's answer. The motion will certainly not be refused with costs, but I shall further consider the answer.

Judgment postponed.—*Usher v. Johnson*, August 5th 1840.

On a subsequent day, his Lordship said he had read over the answer. He considered the plaintiff was entitled to the order unless the defendant had qualified his admission of a balance, and shewed that he had applied it to another account. Although a question might arise as to the result of the trading account, yet that was no reason why a sum clearly and explicitly admitted to be due should not be brought into Court.

Queen's Bench Practice Court.

IRREGULARITY.—PLEA.—DEMURRER.—
AMENDMENT.—JUDGE'S ORDER.

A defendant demurred to the second count of a declaration. The plaintiff obtained an order for leave to amend, the defendant having a month's time to plead. The plaintiff waited the month, and although the demurrer was not struck out, and no new plea pleaded, he signed judgment as for want of a plea: Held, that the meaning of the judge's order was that the demurrer should be struck out, and therefore that the judgment was regular.

The declaration in this case contained two counts on bills of exchange, one for goods sold, and the other on an account stated. To the first count the defendant pleaded non-acceptance; he demurred to the second; and pleaded the general issue as to the rest. Three summonses had been taken out;—the first two by the plaintiff, and the other by the defendant. The object of the first was to change the venue from Warwickshire to London; that of the second to amend the second count in the declaration, and of the third, to obtain a month's

time to plead. Three orders were made to the effect of the summonses on the 14th March. On the 12th April the plaintiff amended, and paid the costs of the amendment, and on the 14th he signed judgment; this judgment was afterwards set aside. At the expiration of the month's time, no plea having been put in to the plaintiff's second count, the plaintiff signed judgment as for want of a plea to that count.

Bramwell obtained a rule *nisi* to set aside this judgment on the ground of irregularity. The objection was, that the order for amendment of the plaintiff's declaration did not direct that the demurrer should be struck out. The demurrer had not been struck out, but was left standing; while that remained on the record, there was an issue in law pending between the parties, and which the plaintiff had no right to disregard and sign judgment.

Manuel shewed cause against this rule. He submitted that the demurrer must be considered as gone as soon as the order was made by the learned judge for leave to amend. Although the defendant had not struck out the demurrer pursuant to the order, yet in consequence of that order, the plaintiff had a right to take no notice of the demurrer. That pleading was applicable to the original declaration, and not to it in its amended state. The plaintiff could not join in the demurrer, for it was a mere nullity.

Bramwell in support of the rule. The power to the defendant given by the Judge's order to take a month's time to plead, would have enabled him to plead *de novo*, but it was a mere permission to him so to do; he was at liberty to do so, but was not obliged to do so. In *1 Tidd's Prac.* 708, ed. 9, it was said, "after an amendment of a declaration, the defendant is at liberty to plead *de novo*; that is, he may do so if he has occasion or thinks proper, but he is not obliged to vary his first defence." The defendant was perfectly at liberty to have the demurrer already pleaded standing as his answer to the second count. If so, then it could not be said that there was no plea in the office. That being the case, the plaintiff had no right to treat the demurrer as a nullity. For these reasons the judgment signed is irregular.

Coleridge, J.—It seems to me, that none of the cases cited are exactly in point. I think that under the particular circumstances of this case the plaintiff was right. We must look at the state of things on the 14th March. There was then a demurrer to the second count in the declaration, on one ground only. In consequence of that demurrer, an order was made pursuant to a summons for leave to amend that count. The order for the amendment which was made in consequence of the demurrer, which pointed to a particular fault, was silent as to striking out the demurrer. But at the same time an order was obtained for a month's time to plead on the usual terms of pleading issuably, taking short notice of trial, &c. Now, it is conceded that if the order had directed that the demurrer should be struck out, then on the authorities and on argument, the other pleas must have remained.

Then there would be no answer to the second plea. Then at the proper time, judgment might have been signed for want of a plea to the second count. Now, what was done in that case? The order to amend the declaration did not direct that the demurrer should be set aside, but it was pointed to one particular objection, in consequence of which the amendment was made in the declaration, the judge's clerk did not think it necessary to state any more upon the subject in the order. The clear intention was, that the demurrer should be withdrawn, after the amendment had taken place. The plaintiff was quite right in waiting until the end of the month before he signed judgment. He could not know until then that the defendant would not avail himself of the month's time to plead. The demurrer being gone, the effect was that the second count in the declaration was without answer, and therefore the plaintiff had a right to sign judgment. The present rule must therefore be discharged, and the costs will be costs in the cause.

Rule discharged accordingly.—*Davies v. Stanley*, T. T. 1840. Q. B. P. C.

THE EDITOR'S LETTER BOX.

"Spes" having given notice of examination and admission for the approaching Michaelmas Term, but not purposing to act upon the latter till Hilary Term next, must leave his articles of Clerkship and answers to the questions as to service at the Law Society's Hall, and renew his notice of admission for the following term.

If the work on the Ecclesiastical Courts be sent, we will give it our best attention, but can say no more until we see it.

We agree with "An Old Solicitor," and shall attend to his suggestion.

The Letters of M. H. G.; "Students;" and "Justitia," shall receive early attention.

We thank F. W. for his suggestions, but some of them were not in time to enable us to carry them into effect at present.

A Correspondent at Great Yarmouth suggests the publication of a cheap 8vo. edition of the Statutes from Magna Charta to Will. 4. Such an undertaking, he says, would be amply repaid, for there are very many of his professional brethren, and especially young practitioners, who are obliged to be content with the edition commencing with the first year of the last reign, in consequence of the enormous price of the Statutes at Large.

We beg to remind our correspondents, that the Post Office Regulations should now be understood, and their letters *pre-paid*.

The last Number of this month will contain a Digest of the Cases reported in this Volume, with Title Page, Contents, and Index.

A General Index to the twenty volumes is in a forward state.

The Legal Observer.

SATURDAY, OCTOBER 24, 1840.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CHANCERY REFORM.

No. III.

THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

HAVING in our two preceding articles disposed of certain preliminary observations, we proceed to examine in detail the various portions of the subject we have proposed; and in doing this it will be our object to bring before our readers all the information on each of them now before the public, or in any way accessible to us. Fortunately, various plans for a complete and extensive reform of the Court of Chancery have been given, in one way or other, by persons the best qualified to give an opinion on the subject; and we are thus enabled to go to work with ample materials. We shall, however, endeavour not to be unduly swayed by great names in this matter, but to think for ourselves. We shall throughout assume that a reform is necessary in every part of the Court and its machinery; and we shall waste no time in proving this, as in fact it is now admitted by all. It will be necessary, however, sometimes to lay bare the precise state of things, in order to shew how the remedy may be applied;—to expose the wound that it may be effectually healed.

We shall proceed in the first place to inquire into the necessary reform of the appellate jurisdiction of the Court of Chancery. It will not be denied by any one that there should be an efficient appeal from every branch of the Court of Chancery, and that the present mode of appeal to the House of Lords is unsatisfactory. We shall therefore mention the several plans which have been proposed for its improvement.

1. *Lord Cottenham's plan in 1836.*—In 1836 the present Lord Chancellor brought in a bill,^a by which he proposed that the House of Lords should sit and hear appeals and writs of error (but no other matters) during the prorogation or dissolution of parliament; but the bill did not specify what peers should compose this Court of appeal. Power was to be given to the House of Lords to summon the equity judges to give their attendance and assistance, in the same manner as the common law judges are now summoned. His Lordship further proposed that the Lord Chancellor should always preside at the hearing of appeals by the Judicial Committee of the Privy Council, unless some other person was appointed to preside in his place by the President of the Council, and should cease to sit in the Court of Chancery. This was the plan proposed by his Lordship at that time; but it can hardly be said to convey his present opinion as to the necessary reforms in the appellate jurisdiction.

Lord Langdale's plan in 1836.—The present Master of the Rolls at the same time proposed his remedy, which, so far as the appellate jurisdiction was concerned, was this:—“That the House of Lords should be made a satisfactory court of appeal by the appointment of judges competent to do the work imposed on them, and responsible for the due performance of their duties:” that for this purpose “a Lord President of the House of Lords in matters of appeal and writs of error,” should be appointed: that he should have assistants, to be selected from amongst the persons the most eminent in the law, to be called “Lords Assistant, on the matters of appeals and writs of error,” and

^a See the bill printed, 12 L. O. 2.

as well as the Lord President, should hold their offices during good behaviour: that if on the occasion of any prorogation or dissolution there should remain any appeals or writs of error depending in the House of Lords, it should be lawful for the king, by proclamation to be issued with the advice of the Privy Council, to summon the Lords for the purpose only of hearing and adjudicating on such appeals and writs of error: that when this machinery was added to the House of Lords, the appellate jurisdiction of the Privy Council might be transferred to it. The Master of the Rolls retains the opinion that some such plan as this is necessary, he having reiterated his opinion in the debates in the House of Lords in the last session of parliament. It should further be observed that Mr. Garratt^b calls it "an admirable plan."

Mr. Lynch's plan in 1836.—Mr. Lynch, in 1836, published a pamphlet on the subject of the appellate jurisdiction of the House of Lords, prior to the debate on the subject, in which he expressed opinions very much resembling those of Lord Langdale as to the necessary reforms. "There should," he says, "be always during the whole judicial year, a Court sitting in the House of Lords, consisting of the Lord Chancellor and three other learned individuals. I would have the Lord Chancellor sit in the House of Lords as judge of appeals, but not alone. I would have him assisted by three of the best lawyers that can be found, taking it for granted the Lord Chancellor will be an equity lawyer, because the number of appeals from courts of equity is much greater than from all the other Courts. The other three learned lords should be, one an equity lawyer, one a common lawyer, and one a civil lawyer. But if the Lord Chancellor should not be an equity lawyer, then two of the three others should be equity lawyers. This Court should be the only appeal for England, Ireland, Scotland, and the colonies, and from the ecclesiastical judges. It should have a distinct bar. The costs should be subject to taxation, and put upon a different footing from that on which they stand at present. The Court ought to have the power of calling in the assistance of the equity and common law judges. All the peers should have the right of attending as at present; and with the view of making as little innovation as possible, the three additional judges should be made peers."

Mr. Spence's plan in 1839.—"Without

interfering," says this gentleman, "with the general appellate jurisdiction of the House of Lords, by adopting the principle of the recommendation of the common law commissioners (which has since been sanctioned by the legislature, and to which Sir E. Sugden has expressed his unqualified approbation) an effectual court of appeal might be formed: I mean by causing the Lord Chancellor, assisted by two of the other equity judges, to sit at stated intervals to hear appeals from decisions in equity." This opinion was given in Mr. Spence's pamphlet, published in 1831; but having been republished by him in 1839, would seem to represent his present opinion.

Sir Edward Sugden's plan in 1840.—This is contained in the resolutions^c which Sir Edward printed in the last session of parliament, and to which he has given notice he will call attention in the next session: "that it is expedient that the court of appeal in the House of Lords should consist of the Lord Chancellor and two judges, to be appointed during good behaviour, to be called Lords President, but not necessarily to be peers; and that the Lords President be at liberty to act as judges during the hearing, and to openly deliver their judgments, but not to have voices, if not peers: that it is expedient that the House of Lords, when the arrear of appeals may render it necessary, should sit to hear appeals only, notwithstanding a prorogation: that it is expedient that the House of Lords should have the power of summoning the equity judges upon the hearing of appeals, in like manner as they have the power of summoning the fifteen judges: that it is expedient that the appeals in the House of Lords should be heard with as many of the forms and regulations of the superior courts of justice as are consistent with the jurisdiction and authority of the House: that it is expedient that the two Lords President should sit and hear the matters now referred to the Judicial Committee of the Privy Council, and with that view that the Privy Council should be re-modelled as a Court, and that the sittings of the Privy Council should be regulated with reference to the sittings of the House of Lords."

Lord John Russell's plan in 1840.—His Lordship's opinions on this subject are contained in his speech on the 5th of August last, in the House of Commons, and are of considerable importance. "With regard," he said, "to the bill introduced by the Lord

^b Pamphlet, p. 121, 1837.

^c Printed 19 L. O. 424.

Chancellor, three or four years since, for disconnecting the civil and political functions of the Lord Chancellor, and for the appointment of a permanent judge, considering the immense importance of the functions of the Court of Chancery, the immense benefit which it renders to persons possessing property throughout the kingdom, and the vast control which it exercises over the monied interests of the country, it does appear to me to be the common sense view of the subject, that there should be, as in the Queen's Bench and Common Pleas, a permanent judge at the head of this Court;" and in the rest of his speech the noble lord argues for the necessity of separating the judicial and political functions of the Lord Chancellor.

It may be well also to notice the present expense of an appeal to the House of Lords. Mr. Field alludes to this in his evidence before the Lords Committee of last session, p. 63. He was asked "can you state the proportionate cost of appealing to the Lord Chancellor from one of the other branches of the court, and appealing to the House of Lords?" "The cost of appealing to the House of Lords is very considerably larger. I should say, an appeal of a cause to the Lord Chancellor does not, on an average, cost more than 70*l.* or 80*l.*, an appeal of a motion very far less; the same briefs are used: it is in fact but a rehearing. The fees to the solicitor himself upon such appeal are very trifling. But on appeal to the House of Lords, the expenses of the House are very great; and besides the printing of cases, the whole time and ceremony of getting them ready produces large expenses."

We have now collected the various remedies proposed as to the appellate jurisdiction of the Lords; and it seems universally admitted that the sittings of the court of appeal should not be regulated by the sittings of the House of Lords in its political capacity, but that it should sit independently of prorogation; that it should be formed into a regular court; and that the passage to it should be rendered as easy and as little burdensome as possible. We agree with those who think that the appeal court should consist of three judges at the least; and we think there is much sense in taking a hint from the Exchequer Chamber of the Courts of Common Law, and making the appeal court consist of the equity judges themselves, excluding the judge whose judgment was the subject of the appeal. We would also unite the Judicial Committee of the Privy Council and the House of Lords into one

Court of Appeal, and of this last opinion, it is to be observed, is Mr. Miller, who argues in its favour at considerable length in his late work "on the Unsettled State of the Law." If all this were done, and the separation of the judicial and political functions of the Lord Chancellor effected, we should have, we think, an efficient appellate jurisdiction, competent to dispose of the business, and to give satisfaction to the suitor and the profession.

PRACTICAL POINTS OF GENERAL INTEREST.

INNKEEPER.

AN innkeeper, besides his remedy by action, has a lien upon the horse and goods of his guest for his board and lodging. *Robinson v. Waller*, 2 Rol. Rep. 449; *Jones v. Pearle*, 1 Stra. 556; *Procter v. Nicholson*, 7 Car. & P. 67. In one report of the case of *Jones v. Pearle*, under the name of *Jones v. Thurlow*, 8 Mod. 172, this claim is said to be limited to one night's expences only; but this point does not appear in the report of the case in Strange, and has been clearly overruled by the other cases cited. In Bac. Abr., Inns and Innkeepers, D., it is said, that if a horse be committed to an innkeeper, it may be detained for the meat of the horse, but not for the meat of the guest; and it has been held that the innkeeper may set up his lien against the real owner of a horse, which has been brought to the inn by a guest. *Yorke v. Greenhaugh*, Lord Raym. 866. This case, however, has been considerably shaken by a very recent decision, in which it was held that an innkeeper has no lien on a horse placed in his stable for the amount of its keep, unless it be placed there by a guest. The circumstances were as follows: Trover for a horse. Plea, first, Not guilty. Secondly, that the plaintiff was not possessed of the horse as of his own property. Thirdly, that a person named Furze was an innkeeper and livery-stable keeper, and that the horse was placed with him at livery by a man named Miller, the apparent owner thereof, upon the terms that it was to be sold if the keep was not paid for; and that the keep not being paid for by Miller, the defendant, as an auctioneer, sold the horse by the direction of Furze, who had no notice that the horse belonged to the plaintiff. Replication to the third plea, *de injurid.* It was opened by *Platt* for the plaintiff, that on the 10th of June, 1839, the plaintiff, who lived in London, had given the horse

into the charge of a bricklayer in his employ to take to Elvetham, in Hampshire, where the plaintiff also had a horse, but although the bricklayer had started from London at seven o'clock in the morning, he was stopped with the horse by the police at Richmond, at almost one o'clock the next morning, he being taken into custody, and the horse placed at Mr. Furze's inn. In the month of July the horse was sold by the defendant for the keep. He submitted that the innkeeper could have no lien for the keep of the horse, as it was placed in his hands against the will of the owner. It was proved that the horse was stopped by the police as before stated; and that on the 25th of July, 1839, Mr. Thorn, a friend of the plaintiff, went to the defendant and Mr. Furze, and told him that he came by the authority of the plaintiff to forbid the sale, and that Mr. Furze asked Mr. Thorn if he would pay for the keep of the horse, which he refused to do; and that Furze then directed the defendant to sell the horse, which he did. *Parke, B.*—The plaintiff is in this case entitled to a verdict, as the innkeeper had no lien upon the horse. How the horse got into the innkeeper's hands does not very distinctly appear; it was probably taken to him by the police. It is proved that the friend of the plaintiff refused to pay for the keep of the horse, but the plaintiff was not bound in point of law to pay for the keep, as the horse was not brought to him by a guest; and an innkeeper has no lien upon an animal put into his stable, unless it be brought by a guest. Verdict for the plaintiff. *Binns v. Pigot*, 9 C. & P. 208.

CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

No. XXVI.

3 & 4 Vict. c. 55.

An act to enable the owners of settled estates to defray the expense of draining the same by way of mortgage. [4th August 1840.]

Tenants for life may apply to the Court of Chancery for leave to make improvements.—Whereas much of the land in England and Ireland would be rendered permanently more productive by improved draining, and nevertheless, by reason of the great expense thereof, proprietors having a limited interest in such land are often unable to execute such draining; and whereas it is expedient, as well for the more abundant production of food, as for the increased employment of farming labourers, and the extended investment of capital in the permanent improvement of the soil, that such proprietors should be relieved from this disability, due regard being had to the interests

of those entitled in remainder: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful for any tenant for life, or for a term determinable on his or her life, under any will, settlement, or other like disposition, entitled in possession at law or in equity to any lands in England or Ireland, (or the guardian or guardians of any infant, on the behalf of such infant so entitled as aforesaid,) to apply by petition to her Majesty's courts of Chancery or Exchequer in England or Ireland for leave to make any permanent improvements in the lands to which he or she shall be so entitled, or any part thereof, by draining the same with tiles, stones, or other durable materials in a permanent manner; and in every such petition shall be specified the improvements proposed to be made, and the estimated cost thereof, and of all matters incidental thereto; and every such petition shall be referred to a master of the said Court of Chancery, or to a master, or in Ireland to the chief or second remembrancer of the court of Exchequer, to inquire into and ascertain the propriety of such improvements being effected; and such master or chief or second remembrancer shall and he is hereby required to call for such plans and estimates and specifications in relation to the said proposed improvements as he shall think fit; and the master or remembrancer shall make his report respecting such proposal; and the court to which any such application shall be made shall make such order upon such petition and report as such court shall think fit.

2. *Copy of petition to be served on parties interested.*—Provided always, and be it enacted, that a copy of every such petition shall be served twenty-one days at the least before the hearing thereof upon the person or persons beneficially entitled at law or in equity to the first vested estate of freehold of inheritance in remainder after the estate of the tenant for life, but if any of such persons shall be of unsound mind, or under the age of twenty-one years, or under any other legal disability, or beyond the limits of the united kingdom of Great Britain and Ireland, then a copy of such petition shall be served on his, her, or their behalf, upon such person or persons respectively as the said Court of Chancery or Court of Exchequer to which the said petition shall be preferred shall appoint for that purpose; and every person upon whom a copy of any such petition shall be so served shall be at liberty to attend before the master or remembrancer to whom such petition shall be referred, and to consent or object to the proposal contained in such petition; and any person appearing before the master or remembrancer on any such petition may also appear before the master or remembrancer, previously to his signing any such certificate as after-mentioned, for the purpose of producing any objection to

the mode in which any such improvements as after-mentioned may have been executed; and all the costs attending any such application, and of the party so served, shall be paid by the party making such application as aforesaid.

3. *Tenants for life may make improvements.*—And be it enacted, That if it shall appear to the satisfaction of such master or remembrancer, on the report of one or more surveyors to be appointed or approved of by the said master or remembrancer, that it will be for the benefit of such lands that they should be so drained, and such report shall be confirmed by the said Court, then it shall be lawful for the tenant for life, or such guardian or guardians as aforesaid, who shall have presented such petition, to make and execute such improvements accordingly.

4. *After improvements have been made, Court to ascertain what money has been properly expended, and to order it to be charged.*—And be it enacted, That in every case where the said Court of Chancery or Exchequer shall have made an order sanctioning the execution of any such improvements of any lands, and such improvements or any part thereof shall have been made accordingly, it shall be lawful for the master or remembrancer whose report shall be so confirmed by the said Court, by a certificate under his hand to be filed in the said court, on having satisfaction that the money had been properly expended, to authorize any such person so entitled as aforesaid, or the executors or administrators of such person, or such guardian or guardians of such infant as aforesaid, by deed in writing, to charge all or any part of the land so drained as aforesaid, or any other lands subject to the like uses or trusts as the lands so drained, with the payment to any person or persons willing to advance the same of the amount of the money which may have been so expended, and so from time to time as any money shall be so expended, together with interest thereon after any rate not exceeding five pounds per centum per annum from the time of making the charge, but so nevertheless that in any such charge it shall be provided that the principal sum charged shall be paid off by equal yearly instalments, such instalments not to be less than twelve nor more than eighteen, the number of such instalments to be determined and recommended by the said master or remembrancer in his report, and such number of the said instalments to be diminished or increased at the discretion of the said master, according to the greater or less improvement shown to have been made by such draining: and for the purpose of securing such monies to be so charged it shall be lawful for the person making such charge to demise the hereditaments to be charged for any term or number of years, by reason whereof the rents and profits of the said hereditaments shall be applicable to the payment of the said monies so to be charged as aforesaid, but so as such term be made to cease on the payment of the monies charged: Provided nevertheless that such person making such charge, and every succeeding tenant for life, or tenant for term of years determinable on his or her life,

shall be bound to keep down the interest and instalments to be charged, or any rent-charge to be charged as after-mentioned; and the lands charged shall not (except as against any tenant for life or other person liable to pay such instalments and interest or keep down such rent-charge) be liable to pay more than six months of any interest, and one half of any instalment, or pay more than half a year's rent charge, which is hereby directed to be kept down as aforesaid: Provided nevertheless, that if any person shall be willing to advance to any person hereby authorized to make such charge as aforesaid the amount he or she may be so authorized to charge in consideration of a rent-charge for a term of not less than twelve nor more than eighteen years, then such person so authorized to charge, instead of charging the said hereditaments with such instalments and interest as aforesaid, may charge the same with a rent-charge for any such period as aforesaid, so as that the said master or remembrancer shall in his said report approve of the substitution of a rent-charge, and of the amount to be charged, and shall ascertain and determine the number of years for which the same shall be granted (such number of years to be ascertained in the same manner as is before directed with respect to the ascertaining the amount of such instalments as aforesaid): Provided also, that no person shall be entitled to make any such charge as aforesaid, unless it shall be stated in the report of such master or remembrancer that it hath been made to appear to him by the report of such surveyor that the annual value of the lands so drained is increased by such draining to an amount equal to seven pounds *per centum* at least on the sum to be charged.

5. *Act may be altered this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of parliament.

NOTES ON THE LEGAL EXAMINATION, BY A BYSTANDER.

[Concluded from p. 363.]

THE satisfactory termination of the examination, and the early prospect of a joyous return to their respective homes, inspired our legal friends with such an unusual animation, that the ordeal they had lately passed seemed almost forgotten. Newton and Neverton had never been in London before, and began to be delighted with every thing they saw; they particularly noticed the difference between the professional habits of the town and country, giving a decided preference to the former.

It appears, that Ready and Neverton were not prepared with their papers, and were consequently unable to obtain admission that morning, upon which Singleton rallied them upon the neglect, observing, however that their case was not so bad as that of one of the candidates to whom the gentleman in black addressed a few words during the ex-

amination, which changed his colour, and were to the effect, as Singleton afterwards understood, that his service or his papers were not satisfactory, respecting which we were assured the examiners were very particular.

Although we had been gratified with much that we had seen in our new acquaintances, we were grieved at the discovery that some of them seemed to regard the taking the oaths required on their admission as an idle ceremony. Singleton and Neverfear foolishly talked of swallowing them, but Newton had the moral courage to say, that he regarded them as a really important part of the transaction, and as such deserving of great consideration, for which we thought him deserving of great commendation.

Neverfear observed that there were circumstances which made the popish declaration the most difficult, besides which, it supposed a theological knowledge, which not one of them possessed. This raised a controversy with Newton, who meekly observed he had no difficulty in subscribing to the principle, though the terms of the declaration sounded rather harshly; and that however well adapted for the times of Wm. III., some modification he thought might be made in those of Wm. IV., without defeating its intention; but Ready thought differently. Singleton said this was a mere matter of opinion, whilst Newton and Ready considered it one of principle. Be this as it may, they all regarded it as a *legal inconvenience*, and were greatly surprised at Neverton's adding, "from which I am exempt!" and on Singleton's eagerly inquiring, why? he promptly replied, "Because I am a Catholic." This added to their surprize, but as Neverton was desirous of shewing that the Revolution of 1688 was based as much upon management as upon principle, Singleton, who dreaded an historical argument, opportunely observed that they should not be at Westminster in time unless they immediately started, and as we were kindly invited to accompany them, three cabs were immediately ordered, and we all went in procession.

It was a goodly sight to see so many young men in what is called "open court," swearing allegiance to the monarchy, and that they would truly and honestly demean themselves as attorneys. The malignant may say the latter is a stigma upon a learned profession; we think otherwise; but it is not so much for us, who know so little, to say more on so delicate a subject, as we confess the nature of the oaths as well as that of the declaration, was new to us; and without trespassing on forbidden ground, we fancy they have been forgotten, or if re-printed, would be as good as new to many others.

The ceremony being over, and our friends having signed the roll, and thereby became full-fledged lawyers, we sincerely congratulated and most heartily wished them success, repeating an observation of our respected solicitors, Messrs. Meanwell and Playfair, that "they had embarked in a profession, the respectability of which was based upon integrity of conduct, and that the best companion they

could take in their journey through life, was a good conscience," in which our young friends concurred, and thanked us for our good wishes.

Our casual acquaintance had ripened into a friendship, as ardent and sincere as many of the ordinary friendships of the day; and rejoicing in the little insight we had obtained into one of the anxieties of the candidate for legal honours, we momentarily forgot our years, and proposed the commemoration of their admission by the good old English fashion of a friendly dinner, which was no sooner proposed than agreed to, and the ——— Hotel, at the unfashionable hour of 4 o'clock being named, the office of caterer was respectfully conceded to me, as the proposer of so agreeable a mode of terminating the acquaintance, thus accidentally commenced.

The preliminary arrangements on entering actual practice prevented several from being punctual, and also hurried them away, so that we have barely to record, that we met, dined, and separated, without intellectual amusement or instruction. This was a great disappointment, as we had "calculated" upon obtaining a little insight into the legal mystery attendant upon those professional paragraphs which occasionally astonish the non-professional reader in his local newspaper.—We notice one.

"We are glad to hear that Mr. Hopeful, who served his articles with Mr. Sly, the respectable solicitor of this town, has passed his legal examination, and that the Lord Chancellor has been pleased to appoint him a master extraordinary of the Honorable the High Court of Chancery." Numerous were the expressions of regret at the abrupt termination of our acquaintance, but during their cessation we took the opportunity of enquiring if the Chancellor had ever seen and tested Mr. Hopeful, or whether the appointment was not one of those honors which might be purchased for a few sovereigns by the humblest member of the profession.

Singleton smiling courteously, replied that it was a mere trifling matter of pounds, shillings and six-pence, and when he published the puff direct, it should be so stated. These were nearly the last words we exchanged, for Newton having to pack up to get into ——— shire by the mail, immediately rose, and bidding all a hearty farewell, left us before seven o'clock. His doing so was a signal for a general breaking up of the party, which immediately separated, never, as we believe, to meet again.

[We believe some difference of opinion has existed amongst a few of our friends, on the subject of these papers, now brought to a close; but we have reason to believe they have been perused with satisfaction by many of our readers, and that the information touching the mode of conducting the examination has been very correctly stated. We thank our correspondent for the pains and trouble he has taken. Ed.]

ANCIENT LAWS AND INSTITUTES OF ENGLAND.

LAWS OF ALFRED.

WE conclude for the present our selections from this volume of the Record Commissioners by the following :

The next prohibitions relate to fighting before the king, a bishop, or an earl.

IN CASE A MAN FIGHTS IN THE KING'S HALL.

If any one fight in the king's hall, or draw his weapon, and he be taken; be it in the king's doom, either death or life, as he may be willing to grant him. If he escape, and be taken again, let him pay for himself according to his 'wer-gild,' and make 'bōt' for the offence, as well 'wer' as 'wite,' according as he may have wrought.

OF THOSE MEN WHO FIGHT BEFORE A BISHOP.

If a man fight before an archbishop or draw his weapon, let him make 'bōt' with one hundred and fifty shillings. If before another bishop or an ealdorman this happen, let him make 'bot' with one hundred shillings.

IN CASE A MAN FIGHT BEFORE AN 'EALDORMAN' IN THE 'GENIOT.'

If a man fight before a king's 'ealdorman' in the 'geniōt,' let him make 'bōt' with 'wēr' and 'wite,' as it may be right; and before this *cxx* shillings to the 'ealdorman' as 'wite.' If he disturb the folk mote by drawing his weapon, one hundred and twenty shillings to the 'ealdorman' as 'wite.' If aught of this happen before a king's 'ealdorman's' junior, or a king's priest, *xxx* shillings as 'wite.'

OF FIGHTING IN A 'CEORLISH' MAN'S 'FLET,' [house or home.]

"If any one fight in a 'ceorlish' man's 'flet,' with six shillings let him make 'bōt' to the 'ceorl.' If he draw his weapon and fight not, let it be half of that. If, however, either of these happen to a 'six-hynde' man, let it increase threefoldly, according to the 'ceorlish' 'bōt:' to a 'twelve-hynde' man, twofoldly, according to the 'six-hynde's' 'bot.'

OF FEUDS.

"We also command that the man who knows his foe to be home-sitting, fight not before he demand justice of him. If he have such power that he can beset his foe, and besiege him within, let him keep within for vii days, and attack him not, if he will

remain within. And then, after vii days, if he will surrender, and deliver up his weapons, let him be kept safe for *xxx* days, and let notice of him be given to his kinsmen and his friends. If, however, he flee to a church, then let it be according to the sanctity of the church; as we have before said above. But if he have not sufficient power to besiege him within, let him ride to the 'ealdorman,' and beg aid of him. If he will not aid him, let him ride to the king before he fights. In like manner also if a man come upon his foe, and he did not before know him to be home staying; if he be willing to deliver up his weapons, let him be kept for *xxx* days, and let notice of him be given to his friends. If he will not deliver up his weapons, then he may attack him. If he be willing to surrender, and to deliver up his weapons, and any one after that attack him, let him pay as well 'wer' as wound, as he may do, and 'wite'; and let him have forfeited his 'mæg'-ship.^b We also declare, that with his lord a man may fight 'orwige,'^c if any one attack the lord: thus may the lord for his man. After the same wise, a man may fight with his born kinsman, if a man may attack him wrongfully, except against his lord; that we do not allow. And a man may fight 'orwige,' if he find another with his lawful wife, within closed doors, or under one covering, or with his lawfully born daughter, or with his lawfully born sister, or with his mother, who was given to his father as his lawful wife."

The following are rather aggravated and singular cases of assault :

OF BINDING A 'CEORLISH' MAN.

"If any one bind an unoffending 'ceorlish' man, let him make 'bōt' with *x* shillings. If any one scourge him, let him make 'bōt' with twenty shillings. If he lay him in prison, let him make 'bōt' with *xxx* shillings. If, in insult, he shave his head like a 'homola,' let him make 'bōt' with *x* shillings. If, without binding him, he shave him like a priest, let him make 'bōt' with *xxx* shillings. If he shave off his beard, let him make 'bōt' with *xx* shillings. If he bind him, and then shave him like a priest, let him make 'bōt' with *lx* shillings.

OF NEEDLESSNESS WITH A SPEAR.

It is moreover decreed; if a man have a spear over his shoulder, and any man stake himself upon it, that he pay the 'wēr'

^a A freeman of ignoble rank, or churl.

^b *Mæg-bot* was a compensation for homicide.

^c *Sine uita*, without war or feud.

without the 'wite.' If he stake himself before his face, let him pay the 'wēr.' If he be accused of wilfulness in the deed, let him clear himself according to the 'wite:' and with that let the 'wite' abate. And let this be if the point be three fingers higher than the hindmost part of the shaft; if they be both on a level, the point and the hindmost part of the shaft, be that without danger."

We next select the penalties for other offences:

OF THE ADULTERY OF A TWELVE-'HYNDE'
MAN'S WIFE.

If a man lie with the wife of a twelve-'hynde'^d man, let him make 'bōt' to the husband with one hundred and twenty shillings. To a 'ceorlish' man, let him make 'bōt' with forty shillings.

OF THE BURNING OF WOODS.

If a man burn or hew another's wood without leave, let him pay for every great tree with v shillings, and afterwards for each, let there be as many of them as may be, with v pence, and xxx shillings as 'wite.'

OF DUMB MEN'S DREDS.

If a man be born dumb or deaf, so that he cannot acknowledge or confess his offences, let the father make 'bōt' for his misdeeds.

IN CASE ANY ONE DRIVE OFF A MARE'S FOAL
OR A COW'S CALF.

If a man steal a cow or a stud-mare, and drive off the foal or the calf, let him pay with a shilling, and for the mothers according to their worth.

IN CASE ANY ONE COMMIT A MINOR TO
ANOTHER'S KEEPING.

If any one commit his infant to another's keeping, and he die during such keeping, let him who feeds him prove himself innocent of treachery, if any one accuse him of aught.

OF THOSE WHO INTRUST THEIR CATTLE TO
MONKS WITHOUT LEAVE.

If a man intrust cattle to another man's monk, without leave of the monk's lord, and it escape from him, let him forfeit it who before owned it.

OF CONFESSION OF DEBT.

If any one at the folk-mote^e make declaration of a debt, and afterwards wish to withdraw it, let him charge it on a

righter person, if he can; if he cannot, let him forfeit his 'angylde,'^f [and [let the reeve] take possession of the 'wite.']

OF TEARING BY A DOG.

If a dog tear or bite a man, for the first misdeed let vi shillings be paid, if he (the owner) give him food; for the second time xii shillings; for the third, xxx shillings. If, after any of these misdeeds, the dog escape, let this 'bōt' nevertheless take place. If the dog do more misdeeds, and he keeps him; let him make 'bōt' according to the full 'wēr,' as well wound-'bōt' as for whatever he may do.

OF MISDEEDS BY CATTLE.

If a neat wound a man, let the neat be delivered up or compounded for.

OF 'GOD-BORHS.'

If any one accuse another on account of a 'god-borh,' and wish to make plaint that he has not fulfilled any of those ['god-borhs'] which he gave him, let him make his 'fore-ath' in four churches; and if the other will prove himself innocent, let him do so in xii churches.

OF CHAPMEN.

It is also directed to chapmen, that they bring the men whom they take up with them before the king's reeve at the folk-mote, and let it be stated how many of them there are; and let them take such men with them as they may be able afterwards to present for justice at the folk-mote; and when they have need of more men up with them on their journey, let them always declare it, as often as their need may be, to the king's reeve, in presence of the 'gemōt.'

OF THE CELEBRATION OF MASS DAYS.

To all freeman let these days be given, but not to 'theow-men' and 'esne-' [hireling] workmen: xii days at Yule and the day on which Christ overcame the devil, and the commemoration day of Saint Gregory, and vii days before Easter, and vii days after, and one day at St. Peter's tide and St. Paul's, and in harvest the whole week before St. Mary-mass, and one day at the celebration of All-hallows, and the iv Wednesdays in the iv Ember weeks. To all 'theow-men' be given, to those to whom it may be most desirable to give, whatever

^d *Hynden*, an association of ten men.

^e General assembly of the people.

^f The purport of this seems to be, that if the plaintiff declined the prosecution without charging some other person with the same offence, he was to forfeit a sum equal to the value of the goods he had lost.

^g *Dei plegium*, a divine or sacred security.

any man shall give them in God's name, or they at any of their moments may deserve."

The following institute prohibits the alienation of land :

OF 'BOC-LANDS.'^s

"The man who has 'boc-lands,' and which his kindred left him, then ordain we that he must not give it from his 'mœgburg,' if there be writing or witness that it was forbidden by those men who at first acquired it, and by those who gave it to him, that he should do so ; and then let that be declared in the presence of the king and of the bishop, before his kinsman."

The following provisions shew the scale of prices to be paid according to the rank of the party.

OF 'BURH-BRYCE.'^h

"The king's 'burh-bryce' shall be cxx shillings. An archbishop's, ninety shillings. Any other bishop's, and an 'ealdorman's,' lx shillings. A 'twelve-hynde' man's, xxx shillings. A 'six-hynde' man's, xv shillings. A 'ceorl's' edor-bryce, v shillings. If aught of this happen when the 'fyrd' is out, or in Lent fast, let the 'bôt' be twofold. If any one in Lent, put down holy law among the people without leave, let him make 'bôt' with cxx shillings."

SUPERIOR COURTS.

Queen's Bench.

[Before the Four Judges.]

TITHES RATING.

The 6 & 7 W. 4, c. 96, (Parochial Assessment Act) applies to the rating of tithes, and they may under that act, be rated at their net annual value.

The case of The King v. Joddrell laid down no new rule as to the rating of tithes.

In this case, the defendant had appealed against a rate made upon him in respect of his tithes, on the ground that he was rated as an occupier of tithes at their net annual value, while the farms in his parish were rated at the net annual value which could be obtained for them as rent, after deducting outgoings for taxes, repairs, insurances, and expences necessary to maintain them in a state to command such rent. He contended that though such might be the proper mode of rating the farms, under the provisions of the 6 & 7 W. 4, c. 96, (the Parochial Assessment Act) that act did

not extend to tithes which were exempted from its operation by the proviso at the end of the first section,^a and were therefore to be rated according to the principle laid down in *The King v. Joddrell*,^b where it was held that the rector was not liable to be rated for the full value of the corn rent. The sessions confirmed the rate, subject to a case to this Court.

The case was argued in Hilary and Easter Terms last, by the *Attorney General*, Mr. *Wightman*, Mr. *Tomlinson*, and Mr. *Puller*, in support of the rate ; and by Sir *W. Follett*, Mr. *Moody*, and Mr. *Hodges*. The arguments are sufficiently stated in the judgment to render a report of them unnecessary.

Cur. adv. vult.

Lord *Denman*.—This is an appeal by the defendant against a rate made for the relief of the poor of the parish of Watford. The defendant, who is the incumbent of the parish, has appealed against the rate, on the ground that he, the tithe owner, has been too highly rated with reference to the other property in the parish, tenants' profits not having been included in the rate. The sessions confirmed the rate on all the lands in the parish, on the estimate of the rent at which such lands might reasonably be expected to let for, free from rates and taxes, and deducting from such rent the probable sum necessary for the purpose of maintaining them in such a state as to command such rent. The vicarage had been rated thus : the vicar appeared to have received a composition for small tithes from the lands of the parish, calculated at the amount of 660*l.*, but the rate was calculated on a payment to him of 540*l.*, a deduction of 80*l.* being made for the amount of expence of collection &c. tenants' rates and ecclesiastical dues. On this state of facts the argument has gone into a very wide range, comprehending in its extent all the cases touching the rateability of property. It

^a By s. 1 of which statute, reciting that "it is desirable to establish one uniform mode of rating throughout England and Wales," it is enacted "that from and after such period, not being earlier than the 21st day of March next, after the passing of this act, as the Poor Law Commissioners shall direct, no rate for the relief of the poor in England and Wales shall be allowed by any justice, which shall not be made on an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expences, if any, necessary to maintain them in a state to command such rent. Provided always, that nothing herein contained shall be construed to alter or affect the principles or relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable.

^b 1 Barn. & Ad. 403.

^s Lands held by book or charter.

^h The violation of a man's castle (burh) or dwelling.

is not necessary for the Court to pursue the same course as the counsel have done, for this rate is in form strictly within the 6 & 7 W. 4, c. 96, and if that statute embraces tithes as well as land, the rate will then be good. Does it embrace the tithes? Hereditaments is a division under which lawyers would place tithes: they are demisable at a yearly rent. It is true that many of the deductions required by the statute to be made from the rateable value of property are not commonly incident to tithes, but still these are deductions sufficiently similar in their nature so far as the question of principle is concerned. The second section of the statute relates only to the form of the rate. It has been argued that the form of the rate as there directed, must be construed by implication to exclude tithes, as in *The Queen v. Lumadaine*^c it was argued upon the same clause that personal property must be impliedly excluded from rateability. We did not then, nor do we now, think that that argument can be supported. The special provision at the end of the first section has however been referred to, as creating on express description of tithes, and the Court has been pressed with the history of the introduction of that provision during the passing of the bill through parliament. Of that, however, the Court cannot take any notice, but must act upon general rules of construction, and not travel in search of the supposed intentions of the legislature. It is true that the language of the provision is rather loose, but the principles on which the rating is ordered to proceed is intelligible enough, though it deals with different kinds of property liable to rate. If hereditaments mean the same thing as tithes, they must be rateable under the provisions of this act. The great principle of the act is, that all rates must be adjusted on a system of equality. The Court may not in all cases be able to work out that principle to its full extent; but it will try to do so, and will consider the validity of a rate with express reference to that principle. Now how is the rating to be made? Why on the net annual produce, after making the deductions therein specified. If there has been a failure in the application of that principle, it has been in consequence of calculating the rate in its aliquot parts, and not as a whole; and by the reference to the arbitrary and fluctuating sense of the terms used on the subject of rating. The Court therefore feels that there is no variation in the principle regulating the making of a rate, though there may be a variety, arising from circumstances, in the decision upon it. That principle is, however, supposed to be liable to an application of only a particular kind; and the case of *The King v. Jodrell*^d has been cited to shew that land and tithes are under different liabilities as to rating. On that decision the Court will make a few remarks. That case has been erroneously supposed to have introduced a new law on the subject of rating. It has done no

such thing. On the contrary, it is cited in *The King v. Adames*,^e as recognizing an old principle. In *The King v. Jodrell*,^f a tithe owner was not allowed a deduction in the rate on his corn rent, for the expence of collection, &c. and the Court held he was not rated on the proper principle of the net value of the tithes, but on the amount of the gross sum for which such tithes would let, while the landowners in occupation of their own lands were rated on the actual rent that could have been received by them, though it was proved that there was to them a profit which was known as tenant's profits, and which it was said ought to be taken as forming part of the gross rent for which the land would let. As they were only rated on what would be the rack rent of the land, the Court thought that the tithe was rated at more, and the land at less than its value, and so held the rate bad. But that case shews that the Court treated tithe as a hereditament within the meaning of the act. The language of the judgment, perhaps, appears to go further. It is said § "of the whole of the annual profits or value of the land, a part belongs to the landlord in the shape of rent, and part to the tenant; and whenever a rate is according to the rack rent (the usual and most convenient mode) it is in effect a rate on part of the profit only." Let us look at the meaning of the words. A rack rent is considered to be paid for the right to occupy and take the annual produce. According as such land may be more or less productive, the rent which may be got from the occupier;—in other words, the annual value will be more or less. That does not shew that a rate on the net annual value of the land will not be equal to a rate made as in this case upon tithes. It is said that that consideration would be of weight, if the owner held the land in his own hands; he would, in fact, have nothing then to deduct from his annual produce but the wages of his men. But who can possibly say that a calculation of the annual value of his farm, made only after that deduction, would be a calculation fairly made, and that the worth of his personal labour for instance, could be fairly withdrawn from consideration? The case of *The King v. Jodrell* does not convince this Court that there is any difference between the tithe owner and the occupier of land, in the manner in which the rate is to be calculated. If there is any thing to shew that the rule thus applied according to the statute, works an injury on the tithe owner, he has the same way in which to relieve himself as the land owners. It is said that this mode of decision will leave the proviso without effect. That may be, but that is the consequence of the manner in which the proviso is framed. The rule for setting aside the rate must be discharged.

Rule discharged. — *The Queen v. Capel, Clerk*, T. T. 1840. Q. B. F. J.

^c 10 Ad. & Ell. 157.

^d 1 Barn. & Ad. 403.

^e 4 Barn. & Ad. 61; 1 Nev. & Man. 662.

^f 1 Barn. & Ad. 403.

^g *Id.* 403.

Lord Chancellor.—Vice Chancellor.

Judgments.

Attorney Gen. v. Pearson, *appeal*
 Ward v. Painter, *appeal*
 Hawksworth v. Brammell, *ditto*
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 Swain v. Pratt, *exons. & fur. dirs.*
 Maund v. Allies } *causes*
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 Davies v. Cooper, *ditto*
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 Herring v. Clobberly, *cause F. C.*
 Duncan v. Chamberlain, *do. F. C.*

Pleas and Demurrers.

S. O. Foley v. Hill, *plea*
 Bignold v. Audland, *demurrer*
 Sedgwick v. Clegg, 2 *demurrers*
 Glasscott v. Govrs. & Co. of Copper Mines in England, 2 *demurs.*
 Nicholson v. Piele, *plea*
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Re-hearings and Appeals.

Abated. { Sherwood v. Storer, *appeal*
 Tucker v. Stoue, *ditto*
 Blanchard v. Cawthorne, *do.*
 Ashton v. Milne, *ditto*
 Gambia v. Gambier, *appeal*
 S. O. Barratt v. Howard, *ditto*
 S. O. Att. Gen. v. Brentwood, *do.*
 S. O. Dixon v. Dixon, *appeal*
 S. O. Dearman v. Wyche, *ditto*
 Att. Gen. v. Ironmongers' Co. *appeal*
 Ditto v. Ditto—(Lady Mico's Charity) *appeal*
 Peach v. Evans, *appeal*
 Society of Practical Science v. Abbott, *appeal*
 Shuttleworth v. Howarth, *appeal*
 Rowley v. Adams, 7 *causes, appeal*
 Peppercorn v. Peacock, *appeal*
 Lichfield v. Baker, *ditto*
 Barnard v. Pumfret, *ditto*
 Buckridge v. Glassey, *ditto*

Michaelmas Term, 1840.

Monday, 2d November—*Motions.*
 Tuesday, 3d November

Causes, further Directions, and Exceptions.

Abated { Newham v. Timbrel
 Villiers v. Flint
 Pelham v. Towne
 Knott v. Chamberlain
 Price v. Smith } Abated in 1829

Abated { Scaife v. Scaife
 Orred v. Shuttleworth
 Leonard v. Chambers
 St. George v. Landor
 Garrett v. Cockrell
 Dorehill v. Barnett
 Codrington v. Lyne
 Delfosse v. Butler
 Bailiff, &c. of East Retford v. Cottam
 Penruddock v. Watts
 Morrison v. Roberts
 Dixon v. Robinson
 Brown v. Gaubert
 Stone v. Stewart
 Woodman v. Bostock
 Bolton v. Barnes
 Baring v. Theobald
 Kynaston v. Capper
 Edwards v. Rutherford
 Roberts v. Lee
 Pimer v. Miffen
 Clarke v. Clarke
 Adams v. Brine
 Best v. Bayley
 Ponget v. Chambers
 Janaway v. Williams
 Ballard v. Triggs
 Morris v. Wilson, *fur. dirs. & costs*
 Hamilton v. Williams
 Yarnold v. Yarnold, *exons.*
 Underwood v. Cole
 Bosanquet v. Burnand, *f. d.*
 Weeks v. Baron.

S. O. Hancock v. Teague, *exons.*
 S. O. Nohells v. Lingham, *ditto*
 S. O. Barratt v. Howard, *exons.*

Abated { Lacon v. Waterton
 Clobery v. Herring
 Folland v. Lamotte
 S. O. Harvey v. Leaf
 S. O. Arnold v. Hardwicke
 Abated, Hinxman v. Sadler
 S. O. Griffith v. Richards
 S. O. Reece v. Taylor, *exons. 2 sets*
 S. O. Bryant v. Beale, 3 *causes*
 Abated, Flight v. Lake, *exons.*
 Abated, Cochrane v. Curlewis
 S. O. Weatherall v. Brown, *fur. dirs. & costs*
 S. O. Fermo v. Breeds
 Abated Stiff v. Simmonds
 S. O. Trought v. Trought
 Abated Griffith v. Browne
 S. O. Edward v. Lloyd
 Abated Sewell v. Murray
 Abated Maistre v. Vines
 S. O. Hussey v. Bickerton
 Abated Richards v. Cummins
 S. O. Heaton v. Blair, *exons.*
 Abated Phillips v. Edwards
 S. O. Clough v. Bond

Abated { Attorney General v. Laslett
 Powell v. Bettiss
 Woodforde v. Woodforde (2)
 Bowers v. Sherman, *fur. dirs. and costs*
 Rawlings v. Solomons
 Hill v. Stephenson
 Gordon v. Robley
 Fox v. Beedham
 Guoch v. Wilson
 Barton v. Jayne, *at def't's req.*
 Shale v. Hodson

S. O. L. C. Swaine v. Pratt, *fur. dirs.*
 Abated Hurrell v. Tarn
 Abated Haylar v. Field
 Abated Baiton v. Jayne
 L.C.S.O. v. Sharwood v. Maine to amend { Furze v. Sharwood
 S. O. Neate v. Pink
 S. O. L. C. Davison v. Cutler, *fur. dirs.*
 Abated L. C. Earl of Falmouth v. Alderson
 Abated L.C. Temple v. Duke of Buckingham
 Abated Breeze v. Hawker
 Abated Long v. Thomson
 S. O. L. C. Slater v. Rumsey
 V. C. Aft. Tm. Robson v. Noel
 S. O. Loftus v. Thomas, *exons.*
 Abated Chambers v. Green
 Abated L. C. Wegg v. Ld. Petre, *at request of def't.*
 S. O. L. C. Wartonaby v. Shuttleworth
 Abated Burnett v. Booth
 Abated Willatts v. Marchant
 Abated L.C. { Jones v. Roberts
 { Jones v. Jones
 S. O. L. C. Langley v. Fisher
 { Ellis v. Attorney Gen.
 S.O.V.C. { *fur. dirs. & costs*
 to amend { Pearce v. Robinson,
 by order
 S.O.V.C. { Melville v. Preston,
 { Etecon
 { Melville v. Preston
 S.O.V.C. Houghton v. Houghton
 V.C. { Hodgkinson v. Walley
 { Heath v. Hodgkinson
 S. O. V.C. Turner v. Trelawney
 Abated L.C. Campbell v. Fleming
 S. O. L. C. Wildes v. Davies
 S. O. L. C. Swan v. Bowden
 S. O. to Hunter v. Judd, *fur. present. dirs. & petn.*
 ptn.V.C. { Ditto v. Ditto, *cause*
 V.C. Graves v. Burgess, *at defendant's request*
 S.O.V.C. Attorney Gen. v. Stone
 S.O. L.C. { Pearce v. Brooke
 { Ditto v. Bryan
 Abated L. C. Hobby v. Collins
 Abated L.C. Bryan v. Twigg, *exs.*
 Abated L. C. Emmott v. Brownjohn
 Abated L. C. Westover v. Foster
 Abated Nail v. Punter
 Abated L. C. Boys v. Trapp
 L.C. Wood v. Lambirth, *exons. & fur. dirs.*
 L.C. Grant v. Hutchinson
 L.C. Hulme v. Hulme, *fur. dirs. and costs*
 S.O. L.C. Holmes v. Upton
 L.C. Logan v. Baines
 Abated L.C. Crutchley v. Gardner
 Abated V.C. Smith v. Poole
 V.C. { Parry v. Pugh
 { Parry v. Roberts
 V.C. Bailiffs of Bridgnorth v. Collins
 V.C. Child v. Knight
 V.C. Brandon v. Budgen
 V.C. Jones v. Winwood, *fur. dirs. and costs*

- V.C. } Wastell v. Leslie
 Abated } Ditto v. Carter
 } Carter v. Leslie
 } Ditto v. Carter
 V.C. Eedes v. Eedes, 2 causes
 V.C. Smith v. Smith
 V.C. { Jackson v. Woolley, *fur.*
 dirs. & costs
 } Woolley v. Jackson, *cause*
 Abated V.C. Blathwayte v. Taylor
 V.C. Johnson v. Child
 V.C. Eyles v. Caulcutt
 V.C. Hughes v. Cooks
 V.C. S.O.G. Butcher v. Jackson
 V.C. Crosse v. Bedingford
 V.C. Attorney Gen. v. Glynn
 V.C. Nicholson v. Horsey
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 Abated V.C. Pelham v. Turner, *at*
 request of defendant
 V.C. Burdett v. Spencer
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 L.C. Long v. Bush
 L.C. Capron v. Sansum
 L.C. Pearce v. Matthews
 L.C. Brandon v. Budgen
 L.C. Littlehales v. Hollis
 L.C. Lee v. Ibbotson
 L.C. Sellers v. Threlfall
 L.C. Rowlls v. Croft
 L.C. Jones v. Jones
 L.C. French v. French
 L.C. Hall v. Cook
 L.C. Brown v. Brown, *fur. dirs. &*
 costs
 L.C. Moore v. Moore, *exons. & do.*
 L.C. Freeman v. Moreley, *fur.*
 dirs. & costs
 V.C. Attorney Gen. v. Mathie,
 exceptions and ditto
 V.C. Jones v. Jones, *fur. dirs. &*
 costs
 V.C. Waters v. Stephens, *ditto*
 V.C. Bainbridge v. Blair, *fur. dirs.*
 and costs
 V.C. Burrows v. Venables, *ditto*
 V.C. Tritchley v. Williamson, *do.*
 V.C. Freeman v. Biers, *fur. dirs.*
 and costs
 V.C. Trelawney v. Roberts, *exons.*
 and ditto
 V.C. Tatlock v. Wellings, *fur. dirs.*
 and costs
 V.C. Noel v. Hoare, *exceptions*
 V.C. Sinkler v. Crotch, *ditto*
 V.C. Fletcher v. Northcote, *exons.*
 V.C. Melland v. Gray, *exceptions*
 V.C. Luckes v. Frost, *fur. dirs. &*
 costs
 V.C. Barnaby v. Filby
 V.C. Runceman v. Stilwell, *fur.*
 dirs. & costs
 V.C. Bartrum v. Bartrum
 V.C. Collett v. Collett
 V.C. Smith v. Pugh
 V.C. Gwynne v. Lloyd, *fur. dirs.*
 V.C. Hughes v. Rogers, *fur. dirs.*
 and costs
 V.C. { Ward v. Swift } *ditto*
 } Ditto v. Lucas } *ditto*
 Mayor of Tenby v. Attorney Gen.
 Jones v. Lowe, *fur. dirs.*
 Cotman v. Orton
- Thomas v. Jones
 Brunt v. Swindell, *fur. dirs. & co.*
 Johnson v. Reynolds
 Attorney Gen. v. Cradock
 Williamson v. Blain, 2 causes
 Buckle v. Harris
 Jones v. Smith
 Webb v. Whitehead
 Towgood v. Andrews
 Hodgson v. Middleton
 Attorney General v. Corporation
 of Bridgewater
 { Attorney General v. West }
 } Ditto v. Palmer }
 Hill v. Smith
 Jumpson v. Pitchers
 Fry v. Fry
 Anderton v. Walker
 Puleford v. Becham
 Taylour v. Earl of Harewood
 Gibbs v. Gregory
 Newman v. Howard
 Coppen v. Gray
 Jeve v. Maish
 Payne v. Bristol and Exeter Rail-
 way
 Malpas v. Crawley
 Beaman v. Hewson
 Newell v. Hickinbotham
 Gray v. Mumbray
 Hayward v. Goodchild
 Moody v. Hebbard, *pauper*
 Barrow v. Duke of Norfolk, *at*
 defendant's request
 Maitland v. Bateman
 Bucknall v. Willment, *fur. dirs.*
 and costs
 Boulton v. Boulton, *ditto*
 Utterton v. Robins, *exceptions*
 Terrell v. Matthews, *exceptions*
 and further directions
 Telford v. Kymer
 Webb v. Grace, *fur. dirs. & costs*
 { Jones v. Chambers, *ditto*
 } Ditto v. Ditto, *cause by order*
 Coape v. Forbes
 Chafey v. Serjeant
 Edwards v. Williams
 Drever v. Dorien
 Guy v. Sharp
 Brundrett v. Jones
 Gibson v. Bent, *exons. & fur. dirs.*
 Sherwood v. Walker
 Newman v. Williams, *further di-*
 rections and costs
 Joy v. Birch
 Hitchcock v. Clendinen
 Lane v. Durrant
 Collingridge v. Cook
 Hastings v. Gage
 Morris v. Smith
 Preedy v. Baker
 Bamford v. Kershaw
 Ord v. Lyon }
 Lyon v. Ord }
 Hodges v. Rouilly
 Marke v. Locke
 Hawley v. Edwards
 Attorney General v. Wilson
 Ashbrook v. Brainbridge
 Jenkins v. Cross
 Price v. Blackmore
 Jennens v. Jennens, *exceptions*
 Foley v. Hill, *exceptions*
 Earl of Falmouth v. Turner
 Bealy v. Curling
- Bushnell v. Bushnell
 Collins v. Presdee
 Gruggen v. Parke
 Hawksworth v. Brammall
 Beaumont v. Binns
 Mighell v. Lashmar
 Hodgetts v. Lord
 Sowter v. Bowden
 Yeunms v. Williams
 Hobson v. Page
 Dutton v. Haslam
 Owen v. Dickenson
 Lowe v. Pennington
 Costa v. Albertazzi
 Palmer v. Thatcher
 Smith v. Dannah
 Evans v. Jones
 Attorney General v. Mathie, *at*
 request of defendant
 Vist. Ashbrooke v. Brainbridge
 London and Birmingham Rail-
 way Company v. Winter
 Benson v. Elmhirst
 Corsbie v. Free
 Budd v. Grundy
 Prince v. Bird
 Heale v. Heale, 3 causes
 Beresford v. Bishop of Armagh,
 exceptions
 Jennens v. Jennens, *exceptions*
 Creswick v. Antrobus, *further di-*
 rections and costs
 Parker v. Vernour
 Mills v. Hudson, *at def't's request*
 Halliday v. Best, *fur. dirs.*
 Turnor v. Turnor
 Richards v. Earl Macclesfield, *ex-*
 ceptions
 Gregory v. Cresswell
 Countess Bridgewater v. Yardley
 Cobbe v. Lowe
 Allen v. Rogers
 Loader v. Lawrence
 Marquis Bute v. Thompson
 Jefferys v. Jefferys
 Dangerfield v. Evans
 Brown v. Thorpe
 Cole v. Davey
 Attorney General v. Bosanquet
 Heurteloup v. Biggs
 Waters v. Waters
 Elliott v. Reynolds
 Coster v. Ward
 Cogger v. Byers
 Horsenell v. Taylor
 Thompson v. Seale
 Goldsmid v. Drewe
 Knowllys v. Madocks
 Hartley v. Reynolds
 Mackereth v. Dunn
 Prentice v. Phillips
 Protheroe v. Protheroe
 Holland v. Gwynne
 Vickers v. Hardwick
 Ward v. Alsager
 Ward v. Ward
 Raxworthy v. Raxworthy
 Evans v. James
 Martin v. Whichelo
 Morse v. Tucker
 Sandys v. Long, *at def't's request*
 Attorney Gen. v. Salter's Co.
 Cropper v. Crosby
 Hawley v. Powell
 Inglis v. Forbes, *exceptions*
 Swain v. Pratt

- Dorrien v. Driver, *exceptions and further directions*
 Browne v. Browne, *further directions and petition*
 Thompson v. Blades
 { Crighton v. Blink }
 { Ross v. Ross }
 Evans v. Williams, *fur. dirs. & ca.*
 Alexander v. Foster, *exceptions*
 Baldwin v. Rogers, *further directions and costs*
 Danks v. Danks, *exceptions*
 Aylett v. Hedingham
 Weston v. Peache
 Webster v. Jenner
 Attorney General v. Irby, *further directions and costs*
 Eckley v. Pheysey
 Soares v. Gower
 Brocklebank v. Pallister
 Wilkins v. Stevens, *7 causes, further directions*
 Cragg v. Gordon
 Evans v. Parry
 Moore v. Gould
 Milroy v. Hodges
 Abated Terrington v. Pearson
 Fellowes v. Payne
 Elworthy v. Billing
 Cooper v. Durrant
 Norcutt v. Dodd
 Edgar v. Milburn
 Corbett v. Bassett
 Robinson v. Addison
 Jones v. Curlewis
 Stephens v. Lawry
 Davis v. Grey
 Parnell v. Hand
 Batt v. Anns
 Taylor v. Thompson
 Watson v. Labrey
 Stephenson v. Bridger
 Cockburn v. Sherman
 Abated Tulloch v. Bartley, *at defendant's request*
 Naylor v. Lackington
 Att. Gen. v. Haberdasher's Co.
 Franklin v. Drake
 Stammers v. Halliboy
 Miller v. Guardians of Easthamstead Union
 Northwood v. Scrase, *further directions and costs*
 Peyton v. Hughes, *fur. dirs. & ca.*
 London and Greenwich Railway Company v. Goodchild, *exons.*
 Montgomery v. Calland, *further directions and costs*
 Potts v. Pinnegar
 Poole v. Allen
 Buckell v. Harlley
 Trulock v. Robey
 { Joliffe v. Hector, *exceptions* }
 { Ditto v. Ditto, *fur. dirs.* }
 Attorney General v. Slaughter
 Kebell v. Philpot, *fur. dirs. & ca.*
 Warner v. Gomme
 Clayton v. Hargreave
 Ridehalgh v. Burnley
 Horne v. White
 Bartlett v. Coleman
 { Livesey v. Livesey, *6 causes further directions* }
 { Ditto v. Ditto, *6 causes by order* }
 Hopkinson v. Bagater, *exceptions*
 Robinson v. Roshier
- Henslowe v. Lambert
 Broadhurst v. Balguy
 Abated Bridge v. Yates, *further directions and costs*
 Ditto Ditto v. Ditto, *ditto*
 Thornton v. Hinge, *fur. dirs. & ca.*
 Alder v. Curry
 Dryden v. Welford
 Cresswell v. Balfour
 Higgins v. Higgins
 Connop v. Hayward
 Graves v. Hicks, *fur. dirs. & costs.*
 Morgan v. Nasmith, *further directions and costs*
 Moore v. Moore, *ditto*
 Blundell v. Gladstone, *exceptions.*
 Shuttleworth v. Greaves, *further directions and costs*
 Attorney General v. Brandreth
 King v. Fleming
 Jarman *alias* Jerman v. Jones
 Furnival v. Foulkes
 Gray v. Davis
 Wyndham now Earl of Egremont v. Young
 Bruin v. Knott
 Jackson v. Miffield
 Wilson v. Wilson and Williams
 Hart v. Hart
 Devenport v. Coltman
 Neesom v. Clarkson
 Bowser v. Colby
 Tomlin v. Tomlin
 Hashold v. Cumine
 Franklin v. Nicholl
 Davies v. Powell
 Lake v. Russell and others
 Bannister v. Davies
 Blacket v. Maude
 Gray v. Gray
 Mc Intosh v. Watson
 Craddock v. Greenway
 Ljall v. Dodd
 Jones v. Smith
 Preston v. Kendall
 Pett v. Goodford
 Buckworth v. Dashwood
 Owen v. Williams
 Lloyd v. Wait
 Bennett v. Pearce
 Rand v. Mc Mahon
 Carr (*pauper*) v. Barker
 Dyball v. Bell
 Winkworth v. Marriott
 Irving v. Elliott
 Wilkinson v. Popplewell, *further directions and costs*
 L.C. Richardson v. Pierson, *ditto*
 Bingham v. Hallam, *ditto*
 S.O. Norman v. Baldry, *ditto*
 Avarne v. Brown, *exceptions*
 Cormouls v. Mole
 Gedge v. Thorne, *further directions and costs*
 Phillips v. Hayward
 Jeffreys v. Hughes, *further directions and costs*
 Attorney General v. Hill
 Hare v. Cartridge, *fur. dirs. & ca.*
 King v. Croome
 Attorney General v. Pratt, *at request of defendant*
 Hall v. Deacon, *fur. dirs. & costs*
 Ley v. Ley, *ditto exons. and petn.*
 Harris v. Lapworth, *further directions and costs*
- Saxby v. Saxby, *fur. dirs. & petn.*
 Moses v. James
 Doo v. London and Croydon Railway Company
 Windsor v. Windsor, *further directions and costs*
 Witherden v. Witherden
 Godden v. Crowhurst
 Atkins v. Hatton, *fur. dirs. & ca.*
 Brydges v. Branfill
 Barlow v. Lord, *fur. dirs. & costs*
 Bryan v. Kinder
 Lee v. Jones, *fur. dirs. and costs*
 Barrodaile v. March
 Getthing v. Vigurs
 Lyse v. Kingdon
 Abraham v. Holderness
 Smith v. Stovin
 Matchitt v. Palmer
 Sutton v. Maw
 Nedby v. Nedby
 Milbank v. Stevens
 Neale v. Dell
 Griffiths v. Griffiths
 Smith v. Wilcoxon
 Ditto v. Thompson
 Walker v. Thomason
 Miller v. Gow
 Cort v. Winder
 Clark v. Wilmot
 Stubbs v. Lister
 Burridge v. Rowe
 Simon v. Topham
 Davies v. Davies
 Whibley v. Hebb
 Osborne v. Harvey
 Helsham v. Langley
 Lodge v. Nicholson
 Nash v. Elsley
 { Townshend v. Fielden }
 { Lloyd v. Ditto }
 Nicklin v. Dunning
 Boulter v. Boulter
 Bastin v. Bastin
 Bludell v. Blundell
 Clayton v. Lord Nugent
 Ward v. Price
 Ryan v. Daniel
 Veitch v. Irving
 Taylor v. Clark
 Douglas v. Kierman
 Swindell v. Wright, *fur. dirs. & ca.*
 Swindell v. Swindell, *ditto*
 Duncombe v. Davies, *exceptions*
 Sawyer v. Birchmore, *further directions and costs*
 Abated, Stone v. Matthews, *exceptions and ditto*
 Tylee v. Stace, *exceptions*
 Duncombe v. Davis, *ditto*
 Penfold v. Giles, *ditto*
 Ewing v. Trecothick, *exceptions*
 Sharp v. Manson
 Taverner v. Day, *fur. dirs. & costs*
 De St. Cyr v. Commissioners of Requests in Ireland
 Knapp v. Woodward, *further directions and costs*
 Walker v. Jefferys
 Powell v. Calloway
 Moore v. Moore
 Frith v. Frith
 Meux v. Bell, *fur. dirs. & costs*
 Senior v. Wilks, *fur. dirs. & costs*
 Danks v. Danks
 Tyrer v. Moor

Cocks v. Edwards
 Mac Combie v. Cook, *further directions and costs*
 Whittaker v. Wright
 Barton v. Curlewis
 East India Co. v. Coopers Co.
 Elsom v. Hall
 Slagx v. Owen
 Fewster v. Turner
 Holt v. Horner
 Hadfield v. Cullingworth
 Thomas v. May
 Blakesley v. Whieldon
 Harrison v. Child
 Browne v. Smith
 Cooper v. Fisher
 Hodges v. Daly
 Short, Penney v. Todd
 St. John's College, Oxford v. Carter
 Dowly v. Wenfield
 Playfair v. Birmingham and Bristol and Thames Junction Railway Company
 Chislett v. East
 King v. Enning
 Gell v. Smith
 Lindsey v. Godmond
 Rock v. Silvester
 Thwaites v. Robinson
 Duncan v. Campbell
 Lovell v. Tomes
 Coulsting v. Coulsting
 Curtis v. Mason
 Allen v. Chaffers
 Page v. Hilton
 Shapland v. Shopland
 3d Nov., Ward v. Nash, *exceptions, two sets*
 Rundell v. Lord Rivers, *exceptions*
 Rolfe v. Wilson

Bowes v. Fernie
 Lewis v. Lewis
 Savill v. Savill
 Morgan v. Hayward
 Ward v. Pomfret, *fur. dirs. & co.*
 3d Nov. Moss v. Baldock, *ditto*
 Hunsley v. Holder, *at deft's req.*
 8th Nov. Ward v. Firmin, *further directions and costs*
 Webb v. Clarke
 Groom v. D'Egville
 Conduit v. Soane, *exons. two sets*
 Smith v. Mackie
 L. C. Everett v. Weaver, *exceptions and petition*
 Bute v. Stuart, *do. as to insufficiency*
 Attorney General v. Field
 Booth v. Lightfoot
 Willett v. Blandford
 Lloyd v. Jones, *fur. dirs. & costs*
 Christian v. Taylor, *exceptions*
 Cochrane v. Robinson, *ditto*
 S. O. Clarke v. Lubbock
 Jones v. James, *fur. dirs. and costs*
 Taylor v. Rundell, *exceptions for insufficiency*
 Barker v. Barker, *fur. dirs. & co.*
 Winder v. Kershawe
 Cole v. Hall
 Fletcher v. Northcote, *exceptions*
 { Davis v. Beavan }
 { Wright v. Norris }

New Causes.

Carew v. Macnamara
 Salisbury v. Morrice
 Thorncroft v. Crockett
 Hoare v. Hornby
 Johnson v. Cameron
 Bunson v. Dyke

Seawin v. Seawin
 Alexander v. Clarke
 Jellicoe v. Price
 Stavers v. Barnard
 Brocklebank v. Northgreaves
 Creeze v. English
 Brickwell v. Tomes
 Hunt v. Thackrah
 Bevir v. Rice
 Boys v. Trapp
 Coningham v. Beauchamp
 Smith v. Spencer
 Henfrey v. Hermon
 Perkins v. Braley
 Wood v. Lewis
 Goode v. Morgan
 Matthews v. Matthews
 Clamp v. Clarke
 Ridley v. Lashmar
 Ireland v. Cox
 Prendergast v. Turton
 Monk v. Earl Tankerville
 Stephens v. Lord, *at deft's request*
 Allwright v. Giles
 St. John v. Macnamara
 Turton v. Jones
 Ibbetson v. Selwin
 Ibbetson v. Penton
 { Howell v. Tyler } *at defendant's request*
 { Ditto v. Ditto }
 Short, Ellis v. Ellis
 Bevor v. Partridge
 Green v. Green
 Lloyd v. Mason, *fur. dirs. & costs*
 Stillwell v. Mellersh, *ditto*
 Roberts v. Thomas, *ditto*
 Tulloch v. Simpson, *exons. & petn.*
 Heslop v. Bank of England, *further directions and costs*
 Salridge v. Tutton, *fur. dirs. & co.*
 Milne v. Bartlett, *ditto*

Rolls.

	Ideas and Demurrers.	Causes.	Further Directions and Costs.	Further Directions and Exceptions.	Exceptions.	Total.
Standing in the printed Book for Hearing at the commencement of Trinity Term, 1840.	4	136	37	6	9	192
Abated and Adjourned Matters brought again into the Paper during Trinity Term and the Sittings afterwards	0	12	2	0	2	16
Set down after the printing of the Cause Book and before the Closing of the Sittings.	4	47	59	3	3	116
Matters in Consent Book.	0	5	2	0	0	7
Total	8	200	100	9	14	331
Heard and disposed of, or removed from the General Paper :—						
As Short Causes	0	53	53	0	1	107
In the Regular Paper	6	56	20	6	3	91
Struck Out or Compromised	1	16	2	0	0	19
Become Abated or Defective	0	12	0	0	2	14
Adjourned at the Request of Parties	0	18	6	0	2	26
Heard and Disposed of from Consent Book.	0	5	2	0	0	7
Total	7	160	83	6	6	261
Remaining in Arrear at the Close of the Sittings (8th August)	1	40	17	3	6	67
Set down since the Close of the Sittings up to the present time (10th October, 1840).	2	46	11	1	1	61
Total now for Hearing	3	86	28	4	7	128

Plas and Demurrers.

Chadwick v. Broadwood, *plea*
Lythgoe v. Watson, *demurrer of defendant* West
and Wife

Lythgoe v. Watson, *demurrer of defendant* Cotham

Abated Causes.

Petty v. Lonsdale—(May 1, 1840) *

Causes which have been called on for hearing and adjourned at the request of parties till after the first day of Causes in Michaelmas Term.

Attorney-Gen. v. South Sea Comp.—*Adj. till 1st Cause day after 2nd Seal Hilary Term.*

Gibbs v. Rowes—to come on with supplemental bill
Attorney-Gen. v. Master of Dulwich College—
(April 20, 1838) *—Day to be fixed by Attorney-
General

Attorney-Gen. v. Bayly—*adj. till 1st Cause day after Term.*

Bater v. Webber—*fur. dir. and costs—adj. till 1st Cause day after Hilary Term*

Knight v. Frampton—*adj. till Hilary Term*

Millar v. Craig—*adj. till 1st Cause day after Term*

Monday 2d November—FIRST DAY OF TERM.—
Motions.

Tuesday, the 3d.

Causes which have been called on for hearing, and adjourned at request of parties till the 1st day of Causes in Michaelmas Term.

Warsop v. Scrimshaw

Wilson v. Mead

Wormald v. Mackintosh, two causes, *fur. dirs. and costs*

Raikes v. Boulton, *fur. dirs. and costs*

Walker v. Earl of Abingdon, *fur. dirs. and costs*

Attorney-Gen. v. Brettingham, *part heard*

Boulting v. Sewell, *part heard*

Suckermore v. Dimes

Artis v. Artis

Shepherd v. Morris

Crosswell v. Lord Kensington

Causes not hitherto called on for hearing, and remaining to be heard.

Partington v. Baillie

Baker v. Harwood

Western v. Williams, *fur. dirs. and costs*

Lane v. Hardwicke

Barton v. Chambers

Ellis v. Griffiths—Ditto v. Carns

Wilkins v. Stevens, four causes—Ditto v. Cornwell,
two causes—Ditto v. Hawkins, *exceptions*

Wild v. Hardy

Farrow v. Reece

Attorney-Gen. v. Wimburn Minster Grammar school
Pritchard v. Foulkes—Ditto v. Gladstone—Ditto
v. Williams

Cotham v. West, *exceptions—set down Mar. 16.*

Radburn v. Jervis—Ditto v. Brundrett—Hare v.
Hill, *exons. fur. dirs. and costs—set down Mar. 16.*

Paull v. Paull—(April 24.)

Flower v. Hortopp—(April 24.)

Shalcross v. Wright—(April 25.)

Chichester v. Hunter—(April 25.)

Townley v. Deare—(April 25.)

Willson v. Leonard—(April 25.)

Synge v. Giles—(April 27.)

Prodon v. Kinton—(April 27.)

Barton v. Bicknell—April 30.)

* The dates within parenthesis indicate the days when Subpœna notes returnable.

Attorney-Gen. v. Moises—Ditto v. Mortimer—
(May 1.)

Attorney-Gen. v. Cotton—(May 1.)

Attorney-Gen. v. Whiteman—(May 1.)

Langhorne v. Waine—(May 1.)

Filder v. Bellingham—(May 1.)

Attorney-Gen. Hanson

Watson v. Nixon—(May 4.)

Penfold v. Giles—Ditto v. Penfold—Ditto v. Giles,
exceptions, set down April 15.

Foster v. Rayner—Set down April 15

Colville v. Middleton—Ditto v. Broke—*fur. dirs. & costs—set down April 15*

Roberts v. Kelly—*fur. dirs. & costs—set down April 23*

Brocket v. Ker—set down April 27

Lodge v. Robins—*fur. dirs. and costs—set down April 30*

Mindrin v. Nance—Meyrick v. Ditto, 2 causes—
fur. dirs. and costs—set down May 4

Short—Mc Kenna v. Everitt—set down May 8

Wood v. Hitchings—*exons. to answer of defl.—set down May 9*

Cotterell v. Simons—*fur. dirs. and costs—set down May 13*

Wood v. Hitchings—*exons. to answer of defl. Corporation of Gloucester—set down May 14*

De Beil v. Thompson—(May 30, 1840)

Henderson v. Constable—(May 30)

Carpenter v. Bignell—(May 30)

Staples v. Browne—(May 30)

Allen v. Martin—(May 30)

Wise v. Steer—(June 1)

Holford v. Phipps—(June 1)

Mayor, Aldermen, & Burgesses of the Borough of
Arundell v. Holmes—(June 1)

Peter v. Radcliffe—(June 1)

Crosby v. Church—(June 2)

Evans v. John—(June 2)

Stedman v. Morgan—(June 2)

Relfe v. Nursey—(June 2)

Seamer v. Pope—(June 3)

Wiggins v. Lord—(June 3)

Beckett v. Thornton—(June 3)

Day v. Peasgood—(June 3)

Mayer v. Townsend—(June 16)

Metcalfe v. Parrington—Ditto v. Jefferson—*fur. dirs. and costs—set down May 29*

Wrench v. Jutting—*fur. dirs. and costs—set down June 2*

Sturge v. Dimsdale—Ditto v. Harford—Ditto v.
Challacombe—*fur. dirs. & cs.—set down June 2*

James v. James—(June 22)

Mackenzie v. Mackenzie—(July 1)

Dibbs v. Goren—*fur. dirs. & cs.—set down June 12*

Fyler v. Fyler—set down June 13

Hood v. Phillips—(July 6)

Shawe v. Richards—(July 8)

Knowles v. Wilks—*fur. dirs. & costs—set down June 18*

Cook v. Fryer—(July 9)

Earl of Clarendon v. Cope—Ditto v. Ditto—*Countess of Clarendon v. Ditto—fur. dirs. and costs—set down June 24*

Scott v. Milne—(July 10)

Armstrong v. Ashness—*fur. dirs. and costs—set down June 26*

Sidebotham v. Barrington—*exons. & fur. dirs. and costs—set down June 30*

Davenport v. Charlesworth—*rehearing—set down July 2*

Nelson v. Ponsford—*exceptions—July 2*

Stephenson v. Dowson—*exons and fur. dirs. and costs—set down July 8*

Price v. Bangham—Ditto v. Leather Sellers Co

Ditto v. Helyer—Ditto v. Price—*fur. dirs. and costs*—set down July 11
 Bonser v. Cox—*exons. and fur. dirs. and costs*—set down July 13
 Swallow v. Lee—*fur. dirs. and costs*—set down July 21
 Pidsley v. Mann—Ditto v. Strugis—*fur. dirs. and costs*—set down July 25
 Meeten v. Duke, 3 causes—*fur. dirs. and costs*—set down July 25
 Eade v. Blake—Ditto v. Collins—Ditto v. Eade, 2 causes—Ditto v. Hailand—Ditto v. Blake—Ditto v. Reynolds—*exceptions*—set down July 29
 Pochin v. Pochin—*fur. dirs. and costs*—set down July 30
 Short—Greenwood v. Evans, 2 causes—*fur. dirs. and costs*—set down Aug. 3
 Short, Killick v. Harriss, *further directions and costs*.—set down August 5
 Attorney General v. Fletcher—Ditto v. Lansberry—Ditto v. Parry—*fur. dirs. & cs.*—s. d. Aug. 5
 Heathorn v. Ayerst—*fur. dirs. & cs.*—s. d. Aug. 5
 Mousley v. Carr—Ditto v. Littlefear—*further directions and costs*—set down August 6
 Needham v. Smith—Ditto v. Ditto—*further directions and costs*—set down August 19
 Salt v. Chattoway—Ditto v. Salt—*further directions and costs*—set down August 20

New Causes

Tuesday 3d. November.

Mills v. Hill
 Adnam v. Cole
 Angell v. Every
 Griffiths v. Evan, otherwise Evans
 Evesham Union Guardian of the Poor v. Smith

Wednesday 4th November.

Hayward v. Hayward
 Holmes v. Heenkin
 Attorney General v. Mayor of Chesterfield
 Bovil v. Cordery
 Wedgwood v. Adams
 Baynes v. Flight

Thursday 5th November.

Attorney General v. Birch
 De Weever v. Rochfort
 Welford v. Stainthorpe
 Jackson v. Cocker

Friday 6th November.

The Registrar's Day.

Page v. Adam
 Ellis v. Maxwell
 Smith v. Wyatt
 Singleton v. Webster
 Sanders v. Benson

Saturday 7th November.

The Master of the Rolls Day.

Att. Gen. v. Drapers' Co., Kenrick's Charity
 Attorney General v. Randle
 Attorney General v. Isles
 Att. Gen. v. Christ's Hospital, London
 Salt v. Salt
 Ditto v. Aldington
 Ditto v. Salt

THE EDITOR'S LETTER BOX.

T. J. is informed that no fees are payable to the Judge's Clerks upon entering in the book kept for the purpose at the Judge's chambers, notice of intention to apply for admission.

The inquiry regarding the Lectures at the Incorporated Law Society should be made at the Hall of the Society.

The Letters of "Werrington;" P. O.; "A Subscriber from the commencement;" A; and "A Subscriber," have been received.

We cannot approve of the remedy proposed by "A Sufferer" from the too ready compliance with the "Instructions to abuse the opposite Attorney." The grievance should be resisted by immediate remonstrance, and though the Judge might object, some good effect would be produced.

A correspondent observes that the revision of the lists of voters under the 2 W. 4, c. 45, commonly called the Reform Act, is now nearly completed, and the decisions by the various barristers in the different counties and boroughs in England, have in many instances been completely at variance with what they were last year, not only upon minor points, but with reference more particularly to rating, paying of rates, occupancy, and tenancy; and as there is no complete collection of the decisions of the barristers published, even to the close of last year's revision, and as there is a probability that the decisions by the revising barristers this year may be some guide for the future, he suggests the publication, by some competent legal gentleman, in a cheap form, of all the important cases which have been brought before them during the present year, together with their decisions, which, he says, would meet with the approbation of the profession, and amply repay the expence of compilation and publication.

We hope to insert a report of the proceedings of the United Law Clerks' Society in our next number.

"Aliquis," a correspondent in the last week's number, is informed, that *Lant*, not *Lamb* v. *Pearce*, 1 W. W. & H. 271, has not over-ruled the earlier cases of *Bentley* v. *Gray*, N. & M. 719; and *Barnes* v. *Roe*, 4 Bing. N. C. 737; as in these two cases a *further sum only* was the subject of the transfer; and in *Lant* v. *Pearce*, there was *both a further sum and a further security*, and hence the obvious distinction in the cases: by the foregoing decisions, it is now settled that where there is a *further advance of money without additional security* as in *Bentley* v. *Gray*, and *Barnes* v. *Roe*, the *ad valorem* duty alone is sufficient; but where, as in *Lant* v. *Pearce*, there is *both a further sum and a further security*, then a deed stamp, with its progressive duty, is required, *in addition to the ad valorem duty*.

The *Common Law Cause List* will be given in the next number.

The Legal Observer.

==
SATURDAY, OCTOBER 31, 1840.
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———"Quod magis ad Nos
Pertinet, et noscire malum est, agitamus.

HORAT.

THE ACTS OF THE LAST SESSION. 3, & 3 & 4 VICT.

WE have already laid before our readers, as soon as they appeared, almost all the acts of the last session, which are likely to be useful or interesting to them. We now propose to review them, and to endeavour to state their exact effect on the existing law. None of them are of paramount importance, but it will be seen that they alter the law in various ways, and they should be made familiar to all.

The first act of any importance is 3 Vict. c. 9, "an act to give summary protection to persons employed in the publication of parliamentary papers," printed *ante*, p. 6, *causa teterrima belli*, to pass which, parliament was assembled one fortnight earlier than usual, and in the passing of which no little commotion, in city and common hall, took place. It is, however, now the law of the land, and has been effectual for its purpose, for we hear no more of Stockdales or Polacks; and it has vindicated the medium course pursued by the large majority of the House of Commons who passed the bill; for on the one hand, we hear of no libels published by the authority of parliament, and on the other, we find no fresh martyrs to the cause, willing to encounter the perils of the Serjeant at Arms. Under this act all proceedings, criminal or civil, against any person for the publication of "any report, paper, votes or proceedings, by or under the authority of parliament, shall be stayed upon bringing before the court in which such proceedings shall be commenced, a certificate of the Chancellor, Speaker, or Clerk of either House of Parliament, and affidavit to the effect that such publication is by order of either House of Parliament (s. 1). Proceedings shall also be stayed when commenced in respect of a copy of an authenticated report; and by s. 3, in proceedings for printing any extract or abstract of any such report it may be shewn that such extract was made *bond fide* (s. 3).

The next act of importance is ch. 15, an act
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to explain and amend the Tithe Acts, printed *ante*, pp. 115, 132, 182; and on this we may observe, that a new body of law is fast growing up, —the commutation law, in lieu of tithe law. This chiefly springs out of the working of the original act, and it was impossible that so great a change affecting so large a mass of property, could be carried into operation without many points arising which could not be contemplated or provided for. The present act deals with some of these, and we look forward to an annual act of the same kind.

The next act which we shall notice is ch. 52, which provides for the administration of the government in case the crown should descend to any issue of Her Majesty, while such issue should be under the age of eighteen. Prince Albert having been duly naturalised by cc. 1 & 2, is, by this chapter, to be entrusted with the guardianship of such issue until such issue shall attain the age of eighteen, and until such time shall have full power and authority under the title of Regent to exercise the royal power and government of this realm; and by s. 4, the king or queen is not to marry under eighteen, without the consent of the regent and both Houses of Parliament. Prince Albert (s. 6) is further restrained from marrying a person of the Roman Catholic persuasion.

Ch. 55, *ante*, p. 484, "an act to enable the owners of settled estates to defray the expense of draining the same by way of mortgage," is a useful act. It enables tenants for life to apply to the Court of Chancery for leave to make permanent improvements in the lands, by draining the same with tiles, stones, or other durable materials, in a permanent manner. By s. 2, a copy of the petition is to be served on all parties interested; and by s. 3, if it shall appear to the Master that it will be for the benefit of the lands that they should be drained, the tenant for life may execute such improvements. After improvements have been made, the court shall ascertain what money has been properly expended, and such sum may be charged on the lands.

Ch. 65, "an act to improve the practice and extend the jurisdiction of the High Court of

Admiralty
~~Regiment~~ printed *ante*, p. 391, is an excellent act, drawn under the auspices of the present learned judge of the Admiralty. It greatly improves the administration of this branch of the law.

Ch. 66 relates to the same subject, being to make provision for the Judge, Registrar and Marshal of the Court of Admiralty. By s. 1, the Judge of this Court is not to sit in any future parliament.

By ch. 72, printed *ante*, p. 376, reciting that it is expedient to restrain marriages from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building under the provisions of the late Marriage Act, 6 & 7 W. 4, c. 85, explained by 1 Vict. c. 22, enables a person in such case to have the marriage solemnized out of the district.

Ch. 77 is "An act for improving and extending the benefits of grammar schools, printed *ante*, p. 404, and, so far as it goes, is a useful act. Under it the technical meaning of the word "grammar," which, by Lord Eldon and other Judges, was held to mean Latin and Greek only, is to be construed to mean all other useful branches of education, and Courts of Equity are authorized to make decrees or orders, and to establish schemes for the application of the revenues of schools on this basis.^a We shall probably have occasion to advert more fully to this act.

By the Reform Act, 2 & 3 W. 4, c. 45, there are several exceptions to the rule of the requisite length of notice of election of members. In New Shoreham the election may be within twelve days after the receipt of the writ, with eight days' notice. In Cricklade the same period may elapse, ss. 33 & 34, while in most other boroughs the returning officer is to proceed in the election within eight days from the receipt of the precept, giving four days' notice. By 3 & 4 Vict. c. 81, printed *ante*, p. 437, one uniform period is established for all boroughs, it being enacted that in all cities, towns, ports, and boroughs, the sheriff or other officer shall proceed to election within eight days after receiving the writ, giving three clear days' notice.

By stat. 1 & 2 Vict. c. 110, s. 14, stock in the public funds, and shares in companies, may be recovered on judgments. By 3 & 4 Vict. c. 82, this is to extend to the interest of any judgment-debtor while in possession, remainder or reversion, and whether vested or contingent, or to stock in the name of the Accountant General. By s. 2, no judgment or decree is to affect real estate at law or equity as to purchasers, mortgagees, or creditors, until a memorandum thereof is left with the senior Master of the Common Pleas, "any notice of such judgment or decree notwithstanding." This is an important provision, so far as purchasers are concerned. The act is printed *ante*, p. 437.

Ch. 86 is an act for better enforcing church

discipline. Under it the bishop may issue a commission of inquiry into the conduct of any clerk in holy orders. The bishop may pronounce sentence by consent, without further proceedings (s. 6). But if commissioners shall report that there is *prima facie* ground for proceeding, articles and depositions shall be drawn up and filed, and the bishop may proceed to sentence the offending clerk (s. 12); and may inhibit him from performing the services of the church, and may assign the moiety of his stipend to the person who performs the duty (s. 14).

Ch. 111 renders the members of banking partnerships embezzling notes, money, &c. liable to punishment, notwithstanding the partnership.

Ch. 113, which carries into effect the Fourth Report of the Ecclesiastical Commissioners, requires a separate notice. It is a very important act.

Besides these acts there are several others which may be briefly noticed.

By ch. 26, printed p. 214, persons are not to be disqualified from giving evidence on account of being assessed to parochial rates (s. 1), and nominal parties on any trial, as churchwardens, overseers, or other officer in any parish, are not to be disabled from giving evidence on any trial, appeal, or proceeding. By ch. 29 poor law guardians are enabled to contract with their medical officers, or other medical officers, for the vaccination of all persons resident in unions or parishes (s. 1); and by s. 8, persons inoculating or otherwise producing small-pox, shall be subject to one month's imprisonment. By ch. 31, printed *ante*, p. 325, the powers and provisions of the several acts relating to the inclosure of open and arable fields are extended. By ch. 34, printed *ante*, p. 326, the Lord Chancellor may grant an annuity of 1500*l.* to any Master in Chancery, on the production of a medical certificate that he is permanently disabled from discharging the duties of his office. By ch. 47, printed *ante*, p. 358, so much of stat. 9 Ann. c. 20, is repealed, as prohibits a mayor, bailiff, or other officer to whom it belongs, to preside at elections of members of parliament, from holding office for two successive years. By ch. 83, the act 1 Vict. c. 80, which was extended by 2 & 3 Vict. c. 37, to the 1st of January, 1842, is extended one year longer, to the first of January, 1843, *ante*, p. 438. By ch. 84, the powers of justices within the metropolitan police districts are defined, *ante*, p. 439. By ch. 89 stock in trade is exempted from being rated to the relief of the poor, *post*, p. 501. By ch. 90 provision is made for the care and education of infants who may be convicted of felony. By ch. 92, p. 455, courts of justice are enabled to admit non-parochial registers as evidence of births or baptisms, deaths or burials, and marriages. This is a useful act, and we shall hereafter inquire into its provisions at greater length.

There are one or two others, as the Chancery Regulation Act, and the Railway Act, to which we have already had occasion to call attention. As it is, on the recommencement of

^a See the law on the subject, stated 11 L. O. 33.

business any of the acts we have glanced at may come into play, and we thought it a fitting opportunity to endeavour to impress them on our readers. A new legal year now opens upon us, which will, if we are not mistaken, produce changes even more important than any here mentioned. Be it our duty to lose no opportunity to explain and facilitate them, when beneficial—but to oppose and obstruct, when injurious.

NOTES ON EQUITY.

WAIVER OF CONTEMPT.

IN *Symonds v. Duchess of Cumberland*, 2 Cox, 411, it was held that in general the amendment of a bill puts an end to all process of contempt for want of an answer, and the Court would not allow a plaintiff to amend without prejudice to a sequestration, notwithstanding he undertook not to require any answer to the amendments. However, in a late case, the *Vice Chancellor* held, although this case was cited, that a mere order to amend is not a waiver of the contempt for want of answer, as it creates no obstacle to the defendant putting in an answer. *Livingstone v. Cooke*, 9 Sim. 468. The rule is laid down as stated in *Symonds v. Duchess of Cumberland*, in 1 Newl. Prac. 292, 3d edit., and in the other books of practice; and if the *Vice Chancellor's* decision is adhered to, it will alter the rule on this point generally received, as it is to be observed that the amendments proposed to be made in *Symonds v. Duchess of Cumberland*, did not require any answer.

OFFICERS OF COURT.

A Court of Equity will interfere to stay the proceedings in an action arising out of a suit in that Court, and brought by one officer of the Court against another. See *Barker v. Dacie*, 6 Ves. 681, in which, on a bill by a clerk in Court against a solicitor for payment of a certain sum, stated as the amount of the plaintiff's bill for fees and disbursements, and Lord Eldon, C., held, that the Court would try a cause between its own officers, and that a reference should be made to the Master to take the account; see also *Frowd v. Lawrence*, 1 Jac. & Walk. 655; and *In re Weaver*, 2 Myl. & Craig. 441, in which last an action by an auctioneer against a solicitor in Chancery for the amount of his bill, was restrained, the sale having been made by the authority of the Court; and a reference was directed to

the Master to ascertain what would be a proper sum to be allowed. On these cases the Court restrained commissioners for examining witnesses from bringing an action for their fees against a solicitor in the cause; and a reference to the Master was directed to ascertain what is due to them. *Blundell v. Gladstone*, 9 Sim. 455.

COSTS OF TRUSTEE.

A trustee is, as a general rule, entitled to costs; but what costs? In some cases to costs only between party and party. A trustee is often a necessary party to a suit, and he disclaims by his answer; but he is still continued as a party to the suit at the hearing. It makes, however, considerable difference to him, whether he is to have his costs as between party and party, or as between solicitor and client. It seems that he is only entitled to costs as between party and party. "The defendant," said the *Vice Chancellor*, in a case of this sort, "was first properly made a party as a trustee. When he put in his answer and disclaimer, he divested himself of that character, and afterwards remained on the record simply as a party who was not a trustee, and consequently he is entitled to his costs as between party and party only." *Bray v. West*, 9 Sim. 429. A similar rule was countenanced by Sir T. Plomer in *Mohun v. Mohun*, 1 Swanst. 201, but the case was not cited.

THE BANKRUPTCY AND INSOLVENCY COMMISSION.

No. VI.

WE now conclude our abstract of the Report of this Commission, with the proposed new Court of Bankruptcy, and Insolvency,—the establishment of which the Commissioners recommend for the administration of the estates of all debtors who are unable to meet their engagements, and are made answerable to the law for the equitable distribution of their property.

"For this purpose we deem it highly expedient that one Court of Judicature should be established. That England and Wales should be divided into such number of districts as your Majesty may think fit, and that the Court should consist of a sufficient number of judicial and other officers for the administration of this branch of the law in such districts. The importance of the jurisdiction to be exercised, and of the questions to be decided; the great

diversity of interests to be protected, and the very large amount of money to be administered by the Court, require that it should be a Court of Record, holding such a position amongst the other judicial establishments of the country as to merit the respect and obtain the confidence of the public. We think, therefore, that the judicial offices should be of such a nature in permanency, in rank, and in emolument, as will secure the appointment of able and efficient persons, men of considerable standing and of acknowledged reputation in the profession of the law. We also think that it would tend much to benefit the public service if a system of gradation in rank and emolument were introduced in the judicial offices.

"We think that the primary tribunals, both in London and in the country, should be constituted by any one or more of the judges of the Court, and that such tribunals should have, (subject to appeal), a more extended jurisdiction in matters relating to the administration of the estates of debtors who are made amenable to the jurisdiction of the Court than the Commissioners of the Court of Bankruptcy now have. Much trouble, delay, and expense would be saved to suitors, by enabling them to procure, in the primary tribunals, many remedies which they are now obliged to seek at a heavy expense elsewhere. In this opinion we are confirmed by nearly all the witnesses who have been examined by us, as well as by the memorial of the merchants, bankers, and traders of the city of London, to the Lord Chancellor, for extending the jurisdiction of the Court of Bankruptcy. The judges acting in the different districts should be auxiliary to each other, so that every inquiry may be carried on in the place most convenient to the parties and witnesses. In addition to the ordinary duties of the judges of the Court, other duties might be assigned to them, particularly in the country, with great advantage to the public service. In the event of the establishment of local Civil Courts for the recovery of debts, the duties of the judges of such Courts might be taken by them. So also commissions of lunacy, and other special commissions from time to time issued out of Chancery, might be directed to such judges. We think it right that each of the judicial functionaries should, in discharging the duties of the Court, have the powers incident to your Majesty's other Courts of Record. We consider it very important that a new Court should, on its establishment, be freed, as much as possible, from every prejudice which has attached, whether deservedly or undeservedly, to that which it has superseded. It may therefore be prudent to adopt a new name for the proposed Court; but we do not, at present, suggest to your Majesty any new title, as we think that point may be reserved till the nature and extent of the jurisdiction of the Court shall have been determined.

"*Of the Appeal.*—The Court of Appeal, on matters within the jurisdiction of the proposed Court, cannot be one that will require permanent sittings; but on the contrary, from returns

which have been made of the business of the present Court of Appeal in Bankruptcy, the sittings of such Court would probably not be many. We think it would be advantageous to the public that a Court of Appeal should be formed of the judges who are engaged in the ordinary and daily business of the Court. For this purpose we recommend that three of the judges in the London district should sit, as often as necessary, as a Court of Appeal, from which there should be an ultimate appeal to the Lord Chancellor.

"*Of the Judicial Officers of the Court.*—The present judicial officers of the Court of Bankruptcy, and of the Court for the Relief of Insolvent Debtors, and of the tribunals for administering the estates of bankrupts in the country, are as follows:—

"Three Judges of the Court of Review.

"Six Commissioners of the Court of Bankruptcy.

"Four Commissioners of the Court for the Relief of Insolvent Debtors.

"Seven hundred Commissioners of bankrupts in the country, in 140 distinct Courts.

"In the proposed new Court, we consider that in lieu of the above, about twenty-two or twenty-three judicial functionaries, with as many registrars attached to them, will be sufficient to discharge the duties of the Court throughout England and Wales, together also with the duties of the Judges of Local Courts for the recovery of debts.

"*Of the Ministerial Officers of the Court.*—

We think it highly expedient that all the officers connected with the administration of the estates of debtors, coming under the jurisdiction of the Court, should be, as far as possible, both in London and in the several districts that may be established in the country, under one roof, and under one control. In London two departments would be required—the registration department, and the accountants' department. The head of the registration department should be the chief registrar. In this office should be kept a register of all proceedings in the court, whether in London or in the country, in such form as the court may direct, so that the public may have the advantage of one central office, in which information of the material proceedings under every insolvent or bankrupt estate may be at once obtained. To this office also the duties performed by the present registrar of meetings, and clerk of inrolments, might be advantageously transferred. In the event of the abolition of the fiat, which we have recommended, the services of the clerks in the establishment of the Lord Chancellor's secretary of bankrupts might be made available for the office of the chief registrar. There are at present two officers under the title of chief registrar; we think that in future one will be sufficient. The head of the accountants' department should be the accountant in bankruptcy; and in this department we think the official assignees should be placed.

"We think it very desirable that all the official assignees should be in one department. It will then be possible to frame a new system,

under which all monies should be paid and received by one officer; and we think it would further tend much to the advantage and accommodation of the public, if a cashier of the Bank of England were to attend daily in this department, in order to pay all cheques upon the spot.

"We think that the several duties of the accountant in bankruptcy, and of the official assignees, should be subject to the general rules and orders of the Court.

"We take this occasion to recommend that official assignees should be relieved from liability to damages, or costs in any action, or suit, for anything done by them in execution of the duties imposed upon them as such official assignees.

"We think that in each country district there should be a similar establishment of official assignees in one department, with a deputy accountant or cashier and receiver.

"The building and premises in which the business of the Court of Bankruptcy is now carried on were originally vested in certain persons in trust for the crown, with power for the Lord Chancellor to appoint new trustees, when the number is reduced to three. We think it would now be much more convenient, and would also save the expense of conveyances to new trustees, if this trust were to be transferred to the Court.

"*Of the fees and expenses of the Court.*—At present a sum of 10*l.* is paid upon the granting of every fiat, which is applied in aid of the general expenses of the Court of Bankruptcy. The average amount of the sums paid in every bankruptcy (over and beyond the sums paid on issuing the fiat) to the Court in London, and to the commissioners in the country, is about 35*l.*; but under fiats prosecuted in the Court of Bankruptcy the fees are payable out of the first monies; in the country, they are payable at all events by the assignees. The amount of the fees falls very heavily upon small estates. We think it essential that a certain sum should be paid in all cases coming under the jurisdiction of the Court, and that this sum should be paid in the first instance by the petitioning creditor upon entering his complaint, who should be repaid after the choice of assignees, out of the first monies coming to the hands of the official assignee. We think the most equitable mode of providing for the maintenance of the Court would be by a regulated percentage upon all property passing through it. This would relieve the small estates from being improperly burthened with fees, and all would contribute to the fund of the Court according to their means.

"Since the establishment of the Court of Bankruptcy, a very large sum of money has been got in under old bankruptcies by the Commissioners of the Court, ably assisted by the official assignees. The greater part of this sum has been distributed among the creditors entitled to it; but from this, and from other sources, there is in the Bank of England the sum of 486,000*l.* three per cent. stock, the annual interest of which is available for the expenses of the Court.

"There is also every reason to believe that a large sum, applicable to the same purposes, will be collected under old bankruptcies in the country.

"We calculate, therefore, that from the above, and other sources, there will be raised a sum amply sufficient for the maintenance of the proposed Court upon a just and liberal scale, without imposing any additional burthen on the finances of the country."

The report is signed by all the Commissioners, (viz., Mr. Justice Erskine, Mr. Commissioner Evans, Mr. Commissioner Fonblanque, Mr. Commissioner Holroyd, Mr. Wynn Ellis, Mr. Hawes, Mr. Glyn, and Mr. Horsley Palmer,) with the exception of Mr. Commissioner Law, whose opinion differs from the other Commissioners.

CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

No. XXVII.

3 & 4 Vict. c. 89.

RATING STOCK IN TRADE.

An act to exempt, until the thirty-first day of December, one thousand eight hundred and forty-one, inhabitants of parishes, townships, and villages from liability to be rated as such, in respect of stock in trade or other property, to the relief of the poor.
[10th August 1840]

43 Eliz. c. 2. 13 & 14 Car. 2, c. 12. *Stock in trade not to be rated.*—Whereas by an act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An act for the Relief of the Poor," it was amongst other things provided, that the overseers of every parish should raise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, in the said parish, in such competent sum and sums of money as they shall think fit, a convenient stock of necessary ware and stuff, to set the poor on work, and also competent sums of money for and towards the relief of the poor not able to work, and also for the putting out of poor children, to be apprentices, to be gathered out of the same parish according to the ability of the same; and whereas by another act passed in the session of parliament holden in the thirteenth and fourteenth years of the reign of King Charles the Second, intituled "An act for the better Relief of the Poor of this Kingdom," the provisions of the said act of Elizabeth were extended to certain townships and villages: and whereas, by reason of the provisions of the said acts, it has been held that inhabitants of parishes, townships, and villages, as such inhabitants, are liable, in respect of

their ability derived from the profits of stock in trade and of other property, to be taxed for and towards the relief of the poor, and it is expedient to repeal the liability of inhabitants, as such, to be so taxed: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock in trade or any other property, for or towards the relief of the poor: provided always, that nothing in this act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods, to be taxed under the provisions of the said acts for and towards the relief of the poor.

2. *Duration of act.*—And be it enacted, that this act shall be in force till the thirty-first day of December in the year of our Lord one thousand eight hundred and forty-one, and that from the said thirty-first day of December this act, and all the provisions herein before contained, shall absolutely cease and be of no effect.

ON THE PROPOSED ABOLITION OF THE PUNISHMENT OF DEATH.

Sir,

The expediency of passing an act for the *Total Abolition of Capital Punishment* is a question which, I believe, has not as yet been brought under discussion in your pages. And as it is one which was urged very prominently forward by its advocates during the last session of parliament, and will probably occupy a still greater share of public attention during the next, I trust I shall not be thought to make an unreasonable demand upon your indulgence in asking space in your publication for a few observations upon the subject.

There are several cases of recent occurrence which cannot fail to lead many to reflect upon the probable effects of such a measure, and strongly to confirm an opinion of the impolicy and inexpediency of such a change in our criminal law. The experiment, I am convinced, would be an extremely hazardous one, and would lead to very fatal results to society in general. It would be a change to which the term "experiment" ought hardly to be applied, inasmuch as human life on the one hand, and public safety on the other, must never for a moment be made the subject of "experiments," grounded (it may be) upon the empty theories or false notions of modern philanthropists.

The cases to which I would refer are:

The case of Madame Laffage; that of Prince Louis Napoleon; and the supposed

acts of incendiarism at Devonport and Sheerness.

[Our correspondent discusses the principal points in these cases with which our readers are sufficiently acquainted, and then proceeds as follows:—]

But whilst deprecating an alteration of so momentous a nature, it is impossible (if it were wished) to conceal the numerous and great evils at present existing in our criminal code. So far from seeking to keep these in the background, I would bring them more prominently forward, because I feel that it is from these evils that the only argument in favor of abolition can be adduced.

To discuss these defects would be too lengthy and tedious a task, let it suffice here merely to name a few, such as—the injudicious and unequal apportionment of different terms of imprisonment for different offences;—the defective management and impolitic treatment of transported convicts;—a similar mis-management and mis-government of prisoners at home;—the highly injurious practice of passing sentence of death *pro forma* upon prisoners. These are all subjects which call loudly for reform. Amend these defects, and place the whole system of imprisonment and transportation upon a more just, I had almost said a more rational footing, and you will withdraw from the abolitionists the strongest points of their argument.

Human life, however, is not a subject to be trifled with. Man cannot lightly arrogate to himself the right to take away the life of his fellow-man. But, the argument from scripture is so strong that it cannot be overthrown. It is idle to attempt to confine the meaning of the various passages on which that argument is founded, to the narrow boundaries of the Mosaic dispensation. Yet I would be content to do even this, reserving only the *Divine sanction* which that argument contains, and laying it aside as a *commandment*, and relying merely on common sense and the principles of public justice, the law as it now stands, I am convinced, is not only maintainable, but quite consistent with every refinement of humanity and every feature of sound policy.

I would urge, in opposition to any change in the solemn severity of our law in this respect, that nothing can be more important than to erect a wide barrier between any intermediate punishment and this last fearful penalty. Let imprisonment at home be more severe; let transportation in our colonies be made a greater object of dread,—and let the infliction of both be more equalized. But let capital punishment be reserved for the most abandoned perpetrators of the blackest crimes, and let that punishment be clothed with all the terrors that solemnity and awe can throw around it, and surely in the discriminating exercise of this greatest judicial power we shall be following a wiser and a safer course than by adopting the experimental theories of the friends of abolition.

We may, by a too great sympathy with criminals, who by their conduct have lost all title

to it, be doing a vast injustice to society in general; and of this we cannot be too careful. The grand object of this branch of legislation should be, to grant the largest degree of lenity and compassion to the criminal consistently with the safety and well-being of the community; and I cannot but think that our criminal law would be well adapted for this if properly adjusted.—With this view, therefore, I would most strongly remonstrate against the proposed innovation, considering the present system in perfect accordance with the grand principle—"In judgment to remember mercy."

JUSTITIA.

THE STUDENT'S CORNER.

LANDLORD AND TENANT.

A LANDLORD lets premises to a yearly tenant, whose tenancy commences at Midsummer,—to determine such a tenancy a half-year's notice is obviously requisite, and that notice, too, must be given at Christmas.

Supposing the rent payable half-yearly, and the tenant to pay the Christmas rent, but make default at Midsummer,—the tenant then removes all goods from the premises, upon which the landlord might distrain; and knowing his power, keeps possession for a twelvemonth, thus setting the landlord at defiance. Instances I am informed, have occurred in which unprincipled tenants have thus treated their landlords.

Under the existing state of the law what is the remedy in such case? Surely, the landlord should have rent or possession, and not suffer the tenant to live rent free! Neither the action of debt nor ejectment, it is conceived, will effectually meet the case.

STUDENS.

SETTLEMENT.

300*l.* was vested in the names of trustees, under a deed of gift, upon trust for settlor for life; and after his decease, upon trust to transfer same unto settlor's daughter, *if living*, for her separate use and benefit absolutely, separate and apart from her present or any future husband, and without being subject to his control, debts, &c., and her receipts, whether married or single, shall be sufficient; but if the said daughter should not be living at the decease of the settlor, then upon trust for such persons as she may appoint, notwithstanding coverture, by deed or will; *And from and after the several deceases of the settlor and his daughter, and in default of such appointment as aforesaid*, upon trust for children of daughter.

The settlor died, and then his daughter, without having had the money transferred, or without having made any will or other appointment. To whom must the trustees transfer the 300*l.*?—to the husband of the daughter, or to her children, to whom the last clause of the

trust deed has reference? Another question may arise—supposing the husband, *if entitled*, should die intestate, without having had the money transferred to him—would the husband's child by a former marriage take equally with the children under the settlement?

It appears the evident intention of the settlor that the daughter's husband should take no interest in the 300*l.* unless by her appointment; and if the question had arisen *on a will*, and *not on a deed*, I think no doubt could be entertained but that the children under the settlement would have been entitled upon the death of their mother, *and not her husband*; but the property not having been transferred to the daughter upon the death of the settlor, the question arises whether the daughter having survived the settlor, the subsequent limitation being contingent, can take effect, the contingency not having happened.

A CONSTANT SUBSCRIBER.

INHERITANCE ACT.

In 1780 Wm. F. died intestate, leaving one son, who inherited an estate. In 1821 the son died intestate, leaving one child, who inherited. And in 1830 this child died intestate, leaving six daughters, who inherited. One of these daughters married in 1838, and in 1839 died, leaving one child, a son, who inherited his mother's share. In the same year 1839, the son died, but his father is still living. Who is the heir to the son?—the father, or the five sisters of the mother of the child? It would seem by s. 2 of the 3 & 4 W. 4, c. 106, that the father, although the lineal ancestor of the deceased child, is excluded, notwithstanding the 6th s. of the same act, and that the five aunts of the child are his heirs.

M. H. G.

SUPERIOR COURTS.

Rolls Court.

PRACTICE.—AMENDMENT.—COSTS.

Costs will be given against a plaintiff relative to the amendment of his bill, if oppressive or vexatious conduct can be established; but in general the Court discourages applications for the purpose of obtaining such costs.

In this case a motion was made for a reference to the Master to tax the costs of the defendant, Sir George Strickland, Bart., of the original bill, and so much of his answer thereto as related to certain estates specified in the notice; and that such costs, when taxed, together with the costs of the application, might be paid to the plaintiff. The original bill was filed on the 30th of November, 1839, against Sir George Strickland, as heir at law of his father, the testator in the pleadings named, and

the personal representatives of the testator, and it prayed that the testator's will and codicil might be carried into execution; that the usual accounts might be taken of his estate; and for certain declarations of the Court. The defendant having put in his answer, the plaintiff amended his bill by inserting much additional matter, and of this amendment the defendant complained.

Girdlestone and Shadwell, in support of the motion.—The plaintiff has entirely altered the form of his original bill, and has in fact made out a new case by his amendments, so that nearly the whole of the original bill, and the defendant's answers to it are rendered useless. The facts also contained in the amendments were all known to the plaintiff at the time he filed his original bill, the will being dated in 1776, and the testator having died in 1808; and he should not be permitted to oppress the defendant with a heavy expence in consequence of his having made mistakes and omissions which he afterwards found it necessary to rectify. The rules applicable to amendments, by which the costs were limited, were confined to cases where the plaintiff could not by reasonable foresight and circumspection guard against the necessity of amending his bill, but the present case was within the principles recognised in *Smith v. Smith*, Coop. 141; and *Maver v. Dry*, 2 S. & S. 113. Besides which, the plaintiff has filed simultaneously two bills for different objects, before the two branches of the Court.

Pemberton and Bethell, *contra*, insisted that the only grounds upon which the motion could be supported, were vexation and oppression; and there was not the slightest pretence for charging either against the plaintiff. The estates belonging to the testator, and which formed the subject of litigation between the parties, were of considerable magnitude, and the matters arising out of the construction of the will were very complicated: some latitude ought therefore to be allowed to a plaintiff under such circumstances, in bringing his case properly before the Court. In *Maver v. Dry*, the character of the bill was wholly changed by the amendment, the original bill being filed for the purpose of having a deed set aside, and the plaintiff by his amended bill praying to have it carried into effect. So in *Smith v. Smith*, a bill for an account was converted by the amendments into a bill of foreclosure. The defendant's application was in effect to try the cause; for how could the Court judge of the propriety of the plaintiff's amendments without going through the whole merits of the case; there being then no case of oppression or vexation, the plaintiff was only entitled to the ordinary costs, which were 20*s*.

The Master of the Rolls said, that it was not a very convenient method to try these matters by motion, and he could not but regret that the time of the Court had been so long occupied by a motion which ought not to have been brought forward. The amended bill constituted the record, and the Court could not always, at the hearing, judge of the expences occasioned by the amendment. That created

a difficulty of a technical description, but it was a difficulty which had been often overcome. The question was, whether there had been any vexation in the plaintiff's conduct, and it had been urged there was, because the plaintiff had asked relief by another bill. All he could do was to direct a reference to the Master to ascertain what additional costs had been created by the amendments. As he did not approve of the motion, he should give no costs of the application.

Strickland v. Strickland, August 5th, 1840.

Queen's Bench Practice Court.

RENEWAL OF APPLICATION.—LACHES.—PRISONER.—IRREGULARITY.—NULLITY.

If a party makes an application to the Court which is unsuccessful on the ground of the defective manner in which the facts supporting the application are brought before the Court, the application will not be allowed to be repeated on amended materials, although they were in existence at the time when the first application was made.

In this case the defendant was in custody on a writ of *capias ad satisfaciendum*. An objection was made to the writ, on the ground that it had been altered without re-sealing. The facts of the case, however, which were to enable the Court to take cognizance of the application, were not sufficiently stated in the affidavits. On this ground, the rule which had been obtained, was discharged.

Wordsworth applied to renew his application on fresh affidavits; the statements now contained in those affidavits supplied the defects existing in the materials produced before the Court on a former occasion. He knew that in general, where facts were in existence at the time that a particular application was made, and they were not brought forward in support of that application, and the application therefore failed, the Court would not allow that application to be renewed. That rule, however, applied only to cases where the application was made on the ground of irregularity. Here, the objection was, not that the *capias ad satisfaciendum* was irregular, but that it was a mere nullity. If the defendant was obliged to remain in custody, until the event of an action against the plaintiff for false imprisonment had taken place, the effect would be, that the defendant would in fact be denied justice.

Coleridge, J. observed, that it was the established practice of the Court never to allow an application to be renewed, where the same materials were in existence at the time of the first and the second, unless the first application was unsuccessful, in consequence of the affidavits being wrongly entitled. Here that was not the case; the same materials were in existence at the time of the former application as now. As to the distinction between applications on the ground of irregularity and any other ground, his Lordship was not aware of

its being recognised in practice. If a party by his own carelessness did not properly bring before the Court the materials which were in existence in support of his application, it was his own fault, and therefore he had only himself to blame. The application now proposed to be renewed could not be entertained.

Rule refused.—*Sunderson v. Westley*, T. T. 1840. Q. B. P. C.

MANDAMUS.—COPYHOLD.—STEWARD.—
SURRENDER.—FEE.

A custom for the steward of a manor to prepare all surrenders for a reasonable fee, appears to be good, although the amount may vary with the length of the surrender. A steward cannot be compelled by mandamus to accept a surrender in a general form, not particularizing the tenements, although a reference is made from that surrender to a former surrender.

This was an application made by *Theisger*, for a *mandamus* to be directed to the lord of the manor of Bishop's Stoke and his steward, commanding them to take a surrender of certain lands within the manor and enrol it. It appeared from the affidavits, that for family purposes, in which the father and son were interested, it was deemed necessary that the former should surrender twenty-eight copyhold tenements to the use of the latter, and then that the son should re-surrender them. On the part of the applicant it had been proposed that the surrender by the son, instead of describing what the tenements were, should only state in general that he surrendered all the tenements which his father had surrendered on a certain day. This form of surrender the steward refused to accept; and it was contended by,

Erle and *Peacock*, that he was right in so doing. His objection was not merely beneficial to the steward himself, but to all persons who were now, or hereafter might be, interested in the copyholds within the manor. Supposing such a mode or form of surrender to be allowed in this instance, it must be allowed in others. It would then become a general custom of the manor, and would continue through a great number of years. In case of any person then being desirous of tracing his title to any of the property so generally surrendered, endless confusion and difficulty would be the result. If any of the earlier court rolls were either destroyed or lost, the title would be lost altogether. The mischiefs and inconveniences thus resulting, would be quite a sufficient reason for upholding the refusal on the part of the steward to adopt the form of surrender tendered by the applicant. On one solitary occasion it appeared that a surrender similar in form was accepted by the steward. This was however under special circumstances, and the affidavits in answer to the application clearly shewed that that instance could not be deemed a precedent. Then as to

the claim which the steward set up, to prepare the surrenders within the manor, the affidavits clearly shewed that it had always been the custom in that manor for the steward to prepare the surrenders, and that certain fees were always paid him for so doing. It was, true, that on some occasions different amounts of fees had been paid. That was natural, because of course the lengths of surrenders would vary at different times. It was however, clear that the fees charged had always been of a reasonable amount. The case of *Rea v. Rigge*,^a was a sufficient authority to shew that such a custom in a manner was a good one. Under these circumstances the present rule ought to be discharged.

In support of the rule *Theisger* and *Beavan* were heard.—They submitted that it would be most unfair if a steward could be allowed to enforce his claim to prepare all the surrenders of property within the manor. No case decided that such a custom was good or could be good, except the case of *Rea v. Rigge*, and that could not be regarded as an authority in the present case, because that proceeded on the ground that the fee demanded by the steward was a fixed one. Here, however, it appeared that the fees demanded by the steward for preparing surrenders had varied at different times. No authority could be produced in order to shew that such a custom as this set up by the steward was good. Then, as to the second point, the form in which it was proposed to make the surrender: all which was urged on the other side was merely argument *ab inconvenienti*. It might possibly happen, that court rolls would be injured, lost, or destroyed. The Court could not, however, in determining the rights of a party, be guided merely by speculations as to the possibility of a contingent difficulty in a future leasing of title. There could be no doubt on the facts of this case, that such a general surrender as the one proposed would perfectly answer all the purposes of the lord of the manor. The father had very shortly before surrendered the twenty-eight tenements in question. They were fully described in that surrender, and the general reference proposed must be quite sufficient for all legitimate purposes. Anything more than this could only be calculated to produce unnecessary expense and inconvenience.

Coleridge, J.—As to the matter of the steward preparing the surrender, the arguments seem to have forgotten what the title of the copyholder is. Now, what is the title of the copyholder? It is that which is on the court rolls. Who is to put that there which is afterwards to form his title? If it is to be contended that every tenant's attorney has a right to have access to the roll and put on it any title he pleases, very extraordinary consequences might be the result. Has he a right to do anything with the rolls? They are the lord's property;—for the benefit of the tenant,

no doubt, but to be kept by the steward only. I am not disposing of the case on this point, and I do not mean to say that if there was a custom set up that the steward should prepare the surrender, coupled with a fee which was wholly unreasonable, that that would be a good custom. But I cannot think that the fact of the fee being fixed is an integral part of the foundation of the opinion expressed by the Court in *Rez v. Rigge*. But it seems to me that the other point is the one on which this rule ought to be discharged. The affidavits on the part of the lord and the steward, state that it has been the practice to have separate surrenders and separate documents, and to describe them as separate on the rolls. That is what I think might be expected, and convenience requires that it should be so. The other side, however, seek to introduce a mode of proceeding from which several inconveniences must result. All that is contended in support of the application is, that in a single instance of one particular conveyance, as to which there is a great deal of explanation in the affidavits, there was such a surrender as the one required. On the general ground, therefore, that the description of the tenements should appear on the roll, and no custom is set up in opposition to it, I think that the steward was justified in refusing to accept such a surrender as the one tendered. The present rule must therefore be discharged, but without costs, as some confusion has been introduced by the steward's varying the amount of fees taken at different times.

Rule accordingly.—*Reg. v. The Lord of the Manor of Bishop's Stoke*, T. T. 1840. Q. B. P. C.

CAUSE LISTS,

Michaelmas Term, 1840

Queen's Bench.

NEW TRIALS

Remaining undetermined at the end of the Sittings after Trinity Term, 1840.

Hilary Term, 1839.

London—Abrahams v. Skinner

Easter Term, 1839.

Middlesex—Edan v. Dudfield

" The Aylesbury Railway Company v. Thompson

" Delisser v. Towne

" Lynch (an infant) v. Nurdin

" Hawkins v. Paxton

" Doe d. Ive v. Scott and another

" Milligan v. Wedge

" Bennett, exor. &c. v. Burton, clerk

London—Boorman and others v. Brown

" Rogers v. Custance

" Enys v. Bennetts and others

" Bult and others v. Morrell and others

Lancaster—Ridgway and ors. v. Ewbank and anor.

York—Tomlin v. Bowskill

" Lockwood, clerk, v. Wood

" Same v. Lund

" Culverson v. Melton

" Bentham v. Martindale

" The Queen v. Stamper and another

" Stephenson v. Stainthorpe

Town and County of Newcastle—Gibson v. Kirk

Cumberland—Martindale v. Smith

Cornwall—Powning v. Leach and another

Somerset—The Queen v. Walter Irvine

Trinity Term, 1839.

Middlesex—Dixon v. Thompson

" Banks v. Rough, sued, &c.

" Nathan v. Irwin

York—Racon v. Smith and another, assces., &c.

Michaelmas Term, 1839.

Middlesex—Poole v. Sedden and another

" Stapleton v. Harper

" Doe d. Lyster and others v. Goldwin

" Lewis v. Reilly and another

" Lane v. Mullins

" Wilcoxon v. Walker

" Meredith and another v. Simmons

London—Sliffield, executrix, v. Rivolta

" Hankey and ors., assignees, &c. v. Cobb

Essex—Chaney v. Payne

" Birmingham, Bristol, and Thames Junction Railway Company v. Holford

Kent—Abington, Esq. v. Lipscomb

Surrey—Doe d. Angell v. Angell (Rawlings, tenant)

" Same v. Same (Harham, tenant)

Lincoln—Carrett v. Morley and others

" Same v. Same

" Bonner, clerk v. Prest

" Beadsworth v. Torkington

Leicester—Doe d. Sturges v. Ward and others

" Fosbrooke v. Fosbrooke

Berks—Lock v. Sellwood

" Sellwood v. Mount and others

" Green v. Neale and another

Gloucester—Wintle v. Freeman

" Same v. Same

Oxford—Doe d. Cozens v. Cozens

Devon—Bickford and others v. Skews

" Webber v. Richards

" Neck, executor, &c. v. Smart

Hants—Doe d. Fleming, Esq. v. Snook and anor.

Cambridge—The Queen v. Brown, clerk, and anor.

Pembroke—Baron de Rutzen and Wife v. Farr

Cardigan—Doe d. Davies v. Davies

Cardmarthen—Lang and others v. Nevill and anor.

Westmoreland—Fisher, clerk v. Barrell and anor.

Northumberland—The Queen v. Warkman, clerk

" Brunton and others v. Hall

" Nixon v. Nanny, Esq.

Lancaster—Smith v. Burdekin

" Richardson v. Dunn

" Fielden v. Seddon and others, executrix

" and executor

" The Master, Wardens, and Society of the Art and Mystery of Apothecaries

" of the City of London v. Greenough

" Green and others v. Smithies

Hilary Term, 1840.

Middlesex—Mason v. Paynter Esq.

" Baker v. Woollams and another

" Rlogg v. Aston

" Scott v. Parker

" Hickey v. Edgington

" Connelly v. Holt

" Curlew v. Corfield

London—The Queen of Portugal v. Rothschild and others
 „ Niven and another v. Devaux and anor.
 „ Wheeler v. Montifiore and others
 „ Thompson v. Stuart
 „ Ward v. Law, one of the public officers, &c.

Easter Term, 1840.

Middlesex—Claridge v. Latrade
 „ Same v. Same
 „ Roxburgh v. Devon, E
 „ Impett v. Philipps
 „ Snagg v. Greene, sued with Lamb
 „ Bell v. Mantle
 „ Carpenter v. Wall (a prisoner)
 „ Lane and others v. Burghart
 „ Keily v. Curlewis
 „ Bingham v. Stanley
 „ Foxcroft v. West
 London—Ellwand v. Melville
 „ Same v. Same
 „ Collard and anor. v. Allison and anor.
 „ Hackwood, who has survived, &c. v. Tomes

„ Benson v. Blunt
 Leicester—Hopley v. Crockett, clerk
 Warwick—Doe d. Earl of Abergavenny v. Hawkes
 Northampton—Davies v. Thompson
 Sussex—Beale v. Holmes
 „ Candle v. Seymour, Esq.
 Surrey—Cantwell v. Saunders
 „ Darby v. Harris and others
 „ Hornby v. Coulton
 Gloucester—Slatter v. Oakley
 „ Davies v. Black, clerk
 Berks—Doe d. Ewer v. Willis
 „ Eblett v. Haslam
 Stafford—Doe d. Elwell, assignee, &c. v. Hordern and another
 Worcester—Aston v. Gaudon
 Chester—Fitton v. Hammersley
 Denbigh—Jones v. Overton
 Radnor—Lewis v. Meredith and ors. (*in replevin*)
 York—The Manchester and Leeds Railway Company v. Fawcett
 Norfolk—Browne v. Clark, sued, &c.
 „ Sheppard v. Dry and Everett
 Bucks—Champion v. Griffiths
 „ Same v. Same
 „ Clayton, Bart. v. Corby
 Devon—The Hon. N. Fellows v. Clay
 „ Doe d. Williams, Bart. v. Nancekeville
 „ Green v. Eales
 „ Doe d. Earl of Egremont v. Hellings
 „ Same v. Same
 „ Ramsay, the younger, and another v. Beaver

Somerset—Andrews and another, administrators, &c. v. Goodfellow and another
 „ Pharazin v. Johnson
 „ Padfield v. Tapp
 „ Doe d. Avery v. Avery
 „ Doe d. Earl of Egremont v. Date
 „ Same v. Williams and another
 Somerset—Same v. Stockham
 „ Same v. Bellamy
 „ Same v. Pullman and others
 „ Same v. Warden and another
 „ Same v. Gould and others
 Hants—The Queen v. Buckley

Trinity Term, 1840.

Middlesex—Doe v. Harlow and others
 „ Doe d. Warwick v. Coombes and anor.
 „ Curlewis v. Cox

London—The Queen v. Jacobi Ahrenfeld and three others
 „ Pipe and another, administrators, &c. v. Steele and Harvey

COURT IN BANCO.

PEREMPTORY RULES for Michaelmas Term, 1840.
First Day.

Wilton, Gent, one, &c. v. Chambers
 The Queen v. Mayor, &c. of Ludlow
 The Queen v. Trustees of Dewsbury Roads
 The Queen v. George Quayle
 The Queen v. Henry Rumsey Williams
 Elliott v. Kendrick
 The Eastern Counties Railway Company v. Cooke
 Same v. Fairclough
 The Master, Wardens, &c. of the Apothecaries of London v. Harrison
 The Queen v. Inhabitants of Barton
 The Queen v. Southend Pier Company
 The Queen v. Theobald O'Doherty
 In the matter of a *habeas corpus* for John Easton, a smuggler
 The Queen v. James Stewart and another, overseers of St. George, Hanover Square
 Dyke and another v. Richards

Second Day.

The Queen v. Justices of Wilts
 The Queen v. Victoria Park Company
 The Queen v. Midland Counties Railway Company
 The Queen v. Eastern Counties Railway Company, ex parte Mary Price and others
 The Queen v. The Same (ex parte Collingridge)
 The Queen v. Commissioners of Broughton Inclosure
 The Queen v. The Scriveners Company
 The Queen v. Dennett
 Colley, appellant v. The Mayor, Aldermen, and Burgesses of the Borough of Gravesend, (respondents)
 Bosanquet and others v. Ransford, one of the public officers, &c.
 Doe on the demise of Rees v. Howell

Third Day.

The Queen v. John Kirby Hedges
 The Queen v. Justices of Shrewsbury and Salop
 Burton v. Gill
 The Queen v. Justices of Wilts
 The Queen v. Churchwardens of Manchester
 Wilson, administrator, &c. v. Knapp and another
 The Queen v. Justices of Cambridgeshire
 In the matter of James Brown, Gent., one, &c. ex parte the Justices of the County of Southampton
 The Queen v. Justices of Dover
 The Queen v. Directors of Saint Pancras
 The Queen v. James Hatfield
 The Queen v. Charles E. Brown
 Ex parte James Wells and Wife, in the matter of Edward Daniel, Gent., one, &c.
 Eardley v. Law, one of the public registered officers
 Ex parte William Cuming and Wife, and another
 In the matter of T. Bland, Gent., one, &c.

Fourth Day.

The Queen v. Joseph Polwart

BAIL COURT.

PEREMPTORY PAPER for Michaelmas Term, 1840.
First Day.

The Queen v. Justices of Middlesex
 The Queen v. John Sulley and another

The Queen v. Aldermen of Malmesbury
In the matter of arbitration between William
Jardine and another
In the matter of arbitration between George
Higham, Gent., and another
Wright v. Lewis and another
Amor v. Lewis
In the matter of arbitration between William
Powell and others
In the matter of arbitration between Joseph
Fletcher and others
The Queen v. Justices of Sussex
The Queen v. The Justices of Hants
Coull v. Hall and another
Coull and another, executors, v. Hall and another

SPECIAL PAPER.

- Special Case; † Special Verdict; the rest are Demurrers.

Michaelmas Term, 1840.

- Archbishop of York & others v. Trafford & ora.
- Hasleden and another v. Almond
- Doe d. Lean v. Lean and others
- Price and Wife v. Rolt and Wife
- Field v. Adames and others
- Fisher v. Ford
- Ford v. Lefevre
- Bennett, executors &c. v. Burton
- The Chancellor of the University of Oxford and the Mayor, &c. of the City of Oxford v. Cook
- Hewett v. Hewett
- Andrews v. Marris and another
- Smith v. Kean
- Hunt and another, assignees v. Robins
- Jobling v. Brown
- Danby v. Hope
- Stevenson v. The Mayor &c. of Berwick-upon-Tweed
- † Saunders and others v. Vanzeller
- Hughes v. Done
- Simpkins v. Williams
- Williams v. Astley, Bart.
- Doe d. several demises of Jones & ora. v. Pearce
- Stocks v. Roberts and others, in *replevin*
- Greatorex v. Brook
- Hunt v. Burnell, Esq.
- Plumbe and Wife v. Bould
- Purchell v. Salter
- Williams, Gent. v. Jones, Gent.
- Humphrey, Esq. v. Pennings
- Same v. Same
- Bottock and another v. Hume
- The Birmingham and Gloucester Railway Company v. Thomas Hampson
- Whitaker v. Lloyd
- Marshall v. Adams
- Barton and others executors &c. v. Holman
- Rolton and others v. Inglis and others
- Marshall, Clerk to Trustees v. Adams
- Bell v. Twentyman
- Faithful and another v. Ashley
- Crompton v. Wakley
- Clarke and another v. Williams and another
- Elverd v. Foster and another
- Harvey v. Knockor
- Hallack and another v. The University of Cambridge, in *prohibition*
- Maze and another v. Harrison
- Johnson v. Clarke
- Ricketts v. East India Company
- Jones v. Reynolds
- Elwall v. Barry
- Nicholls v. Wigley
- Ratton v. Davis
- Paul v. James

Little v. More and another
North v. Lord
Doe d. Rayer and others v. Strickland
Dawson v. Dacre, Clerk to Trustees

Common Pleas.

REMANET PAPER, MICHAELMAS TERM, 1840.

Enlarged Rules.

Woolcot v. Clode, to 1st day
Neale v. Worthington, ditto.
Doe (Christopher) v. Roe, to 5th day
Doe (Woodhead) v. Goldthorpe, ditto
Same v. Same, ditto
Dosssett v. Gingell
In re Inman, till further order of the Court.

NEW TRIALS OF HILARY TERM, 1839.

London—Edwards and others v. Scott & another
" Ferguson and others, assignees v. Spencer
and another
" Magnay v. Knight
" Brandon v. Smith
" Hoye v. Bush

NEW TRIALS OF EASTER TERM, 1839.

Middlesex—Stewart v. Crump
" Wilson v. Lewis
" Woollaston and others v. Hakewell
" Archer v. English and another
" Ritchie v. Wilson
" Tyrrell v. Woolley
London—Norris and another v. Stamp
" Lamburn v. Cruden
" Abbott v. Hendricks
NEW TRIAL OF TRINITY TERM, 1839.
London—Hope v. West

NEW TRIALS OF MICHAELMAS TERM LAST.

Middlesex—Harries v. Goodwyn, administratrix
" Fisher v. Dewick and another
London—Startup v. Macdonald
" Smith v. Brandrum
" Franklin v. Spencer
" Glynn v. Houstoffer
" Figgins jun. and another v. Earl Brooke
and Earl Warwick
" Evans v. Hills
Devon—Rees and another, assignees v. May

NEW TRIALS OF HILARY TERM LAST.

Middlesex—Munn v. Johnson and others
" Bartholomew v. Carter
" Davey and another v. Phelps
London—Deacon and others v. Stoddart and others
" Same v. Same
" Lees v. Berry
" Chisman and another v. Count and anor.
" Brown v. Edgington
" Wilmshurst v. Bowker
" Gillett and another v. Chapman

NEW TRIALS OF EASTER TERM LAST.

Middlesex—Crane v. Price and others
" Bethell v. Blencowe
" Atherstone v. Bostock
" Soanes v. Carroll Knt. and others
" Filmer v. Burnby
" Rudd v. Scott
" Smith and others v. Maton
" Groom v. Bluck
" Ford v. Yates
" Smith v. Knoweldon
" Richards and another v. Hayward
" London and Brighton Railway Com-
pany v. Fairclough
" Croasdale v. Squires

Somerset—Matthews v. Hassall
 „ Same v. Same
 Worcester—Doe (Winnall) v. Broad

NEW TRIALS OF TRINITY TERM LAST.

Middlesex—Learmonth v. Lamb
 „ Thompson v. Jackson and another
 „ Salter v. Woodlams and another
 „ Howard v. Smith
 „ Linthorne v. Beard and another
 „ Harper and another v. Williams
 London—Gear v. Goldney
 „ Warlters v. Lloyd
 „ George, administrator v. Wyborn

Cur. ad. Vult.

Bonzi v. Stewart
 Same v. Same
 Earl Mansfield v. Blackburne
 Same v. Same
 Gould and others v. Oliver
 Brandon v. Barrett and others
 Medley and others v. Pritchard and another
 Doe (Cape and others) v. Walker

DENURER PAPER OF MICHAELMAS TERM,
4th VICTORIA, 1840.

Monday	2d Nov.	} Motions in arrest of judgment.
Tuesday	3	
Wednesday	4	
Thursday	5	

Wednesday 11th, *Special Arguments*
 Barrett v. Stockton and Darlington Railway Co.
 Gwynne v. Davy and another
 Pothonier, administrator v. Sanders
 Crowe and another, executors v. Martin
 Davis v. London and Blackwall Railway Company
 Smith v. Tanner and another
 Billing v. Kightley
 Kemble v. Mills
 Graeff v. Hallin
 Todhunter v. Johnson and another
 Berry v. Chadwick and another
 Jepson and another v. Hawkins and another
 Priestley, Clerk v. Foulds
 Devaux and another v. Astell and another
 Smith and others v. Jolley
 Same v. Bower, (*settled*)
 Husband v. Goble
 Cowan and another v. Braidwood
 Ancell and others v. Powell and others
 Billing v. Kightley
 Wells and another v. Child (*settled*)
 Hine, Clerk v. Reynolds, Clerk
 Wilkinson v. Stephenson
 North, administrator v. Wilder and another
 Wynne v. Wynne and ux.
 Andrews v. Morris
 Ashton v. Freestun
 Francis v. Fleming
 Riggsden v. Parsons
 Ley and another v. Ley and another
 Clow and another v. Brogden and others
 Parkinson v. Whitehead, executors
 Procter v. Sarjeant
 Offey v. Clay
 Taylor v. Marling and others
 Clark v. Lazarus
 Lacey v. Talte (*sued with others*)
 Glaholm v. Hays and others

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Wednesday 18 *Special Arguments*
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 Tuesday 24
 Wednesday 25, end of Term

Exchequer of Pleas.

SPECIAL PAPER.

REMANETS FROM TRINITY TERM, 1840.

*Standing for Judgment.*Cotton v. Goodwin (*Heard 25th June, 1840*)*For Argument.*

Wallace v. Kelsall
 Wallace and others v. Kelsall

PEREMPTORY PAPER.

For Tuesday 3d. Nov. 1840.

To be taken at the Sitting of the Court.

Slade v. Bartholomew
 Jefferson v. Warrington
 Thomas v. Puntan
 Thompson v. Bluck
 Irwin v. Lord Balcarres

NEW TRIAL PAPER FOR MICHAELMAS TERM, 1840.

*Standing for Judgment.**Moved Michaelmas Term 1839.*

London—Hunter v. Parker

*(Heard 2d and 5th May, 1840)*Ruthin—Bloor v. Davies (*Heard 29th May, 1840*)*For Argument.**Moved Trinity Term, 1840.*

Middlesex—Hayward and others v. Couves

„ Carne v. Brice and another

„ Pickard (Pauper) v. Gabriel

„ Hardman v. Robins

London—Corlett, Public Officer v. Foulkes

„ Elliott and ux. admix. &c. v. Kemp

„ Slatterie v. Pooley

Court of Requests.

THE GENERAL LIST OF PETITIONS IN BANKRUPTCY
for hearing at Westminster.*Michaelmas Term, 1840.*

First day of Term—MOTIONS only.

Petitions adjourned (at the request of the parties).

Bailey v. Howarth Gemm v. Kennedy.

New Petitions answered for Monday, 2d November.

Linden v. Baker

Smack v. Smack

Wilson v. Manley

Procter v. Procter

Morgan v. Geach

Lewis v. Stanley

Nicholson v. Sheppard

Toins v. Stanley

Holdsworth v. Robinson

Warren v. Stanley

Ely v. Ely

Bristow v. Stanley

Liggins v. Liggins

Davis v. Stanley

Spink v. Moseley

Potts v. Ayre

Dutfield v. Higgs

Knowles v. Bulley

Gwyer v. Jefferies

Briedee v. Baker

Birley v. Kranss

M'Cheane v. M'Cheane

Kindell v. Derham

Salkeld v. Stringer

Cartes v. Smith

Cooper v. Johnston

Malachy v. Malachy

Allathorne v. Reed

Beer v. Beer

Ewart v. Mason

Bostock v. Whitehead

Pigeon v. Bailey

Goldshede v. Bloxam

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

Frederick Iltid Nicholl, Doctors' Commons.
Arthur Walker, King's Road, Bedford Row.
Lewis Robert Bellamy, South Square, Gray's Inn.
Thomas Francis Justice, Gray's Inn Square.
Germain Lavie, Frederick's Place, Old Jewry.
Benjamin Jones, Llanelly, Carmarthen.

MASTERS EXTRAORDINARY IN CHANCERY

From 25th Sept. to 23rd Oct., 1840, both inclusive, with dates when gazetted.

Sykes, William, Millbridge, near Leeds. Sept. 25.
Dawson, Richard, Epworth, Lincoln. Oct. 2.
Barney, Henry Chads, Southampton. Oct. 2.
Ion, John Watling, Beverley, York. Oct. 16.
Davies, Thomas, Cardigan. Oct. 20.
Simons, William, Carmarthen, Oct. 20.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22nd Sept. to 23d Oct. 1840, both inclusive, with dates when gazetted.

Clarke, Charles Meyricke, and Archibald McArthur Low, Staple Inn, Attorneys and Solicitors. Sept. 25.
Minster, Robert Harvey, and Edward Carthew, Coventry, Attorneys and Solicitors Oct. 9.
Scott, James, and John Bennett, Lincoln's Inn Fields, Attorneys and Solicitors. Oct. 16.

BANKRUPTCIES SUPERSEDED.

From Sept. 22nd to Oct. 23rd, 1840, both inclusive, with dates when gazetted.

Burrell, George Henry, King's Lynn, Norfolk, Cordwainer. Sept. 22.
Dowden, Charles William Henry, Bridge House Place, Newington Causeway, Surrey, Chemist and Druggist. Sept. 25.
Colston, Charles, Pancras Lane, London, Wine Merchant. Oct. 23.
Wellington, James, Ross, Hereford, Butcher. Oct. 23.

BANKRUPTS.

From Sept. 22nd to Oct. 23rd, 1840, both inclusive, with dates when gazetted.

Ackroyd, James, Batley, York, Carpenter and Wheelwright. *Oldend*, Dewsbury; *Battye & Co.*, Chancery Lane. Oct. 9.
Arthur, Robert, and Joseph Forster, Newcastle-upon-Tyne, Linen and Woollen Drapers. *Bell & Co.*, Bow Church Yard; *Symour*, Newcastle-upon-Tyne. Oct. 20.
Budd, John, Liverpool, Commission Agent and Merchant, and of Acton, Chester, Zinc Manufacturer. *Watson*, Liverpool; *Adlington & Co.*, Bedford Row. Sept. 22.
Brown, Evander, Chudleigh, Devon, Draper. *Langley*, Chudleigh; *Drake*, Bouverie Street, London. Sept. 25.
Browne, Edward, Norwich, Timber Merchant

and Builder. *Bridges & Co.*, Red Lion Square; *Pulley*, Norwich. Oct. 6.
Ballanden, John Mac Nab, Sedgley, Stafford, Surgeon and Apothecary. *Phillips & Co.*, Wolverhampton; *Philpot & Co.*, Southampton Street, Bloomsbury. Oct. 9.
Bell, William Curtis, Lincoln, Malster, Corn and Coal Merchant. *Hawkins & Co.*, New Boswell Court; *Danby*, Lincoln. Oct. 13.
Bevan, John, Swansea, Glamorgan, Ironmonger. *Clark & Co.*, Lincoln's Inn Fields; *Harley*, Bristol. Oct. 13.
Brown, John, and George Meakin, Walsall, Stafford, Ale and Porter Merchants. *Rushworth*, Staple Inn; *Watts*, Wednesbury. Oct. 16.
Birch, William, Birmingham, Builder. *Adlington & Co.*, Bedford Row; *Marshall*, Birmingham; *Powell*, Birmingham. Oct. 16.
Bradwell, Robert, Manchester, Fustian Manufacturer. *Adlington & Co.*, Bedford Row; *Hampson*, Manchester. Oct. 16.
Bonnor, George, Bermondsey Wall, Surrey, Rag Merchant. *Johnson*, Off. Ass.; *Vincent & Co.*, King's Bench Walk, Temple. Oct. 23.
Browne, George, Liverpool, Horse Dealer. *Vincent & Co.*, King's Bench Walk, Temple; *Jones*, Liverpool. Oct. 23.
Burnett, George, Newcastle-upon-Tyne, Merchant. *Swaine & Co.*, Old Jewry; *Gibson*, Newcastle-upon-Tyne. Oct. 23.
Carruthers, John, Mitchells, Speldhurst, Kent, lately also of Shepperton, Middlesex, and carrying on business in partnership at Manchester as a Distiller. *Graham*, Off. Ass.; *Hartlett & Co.*, Nicholas Lane. Sept. 25.
Clark, James, Burslem, Stafford, Grocer. *Smith*, Chancery Lane; *Harding*, Burslem. Sept. 25.
Carrington, John, Leicester, Bobbin Turner. *Taylor & Co.*, Bedford Row; *Stone & Co.*; Leicester. Sept. 23.
Cato, William, Hexam, Northumberland, Tea Dealer and Grocer. *Leadbitter*, Staple Inn; *Stainthorpe*, Hexam. Oct. 6.
Chapman, James, Birmingham, Publican. *Chaplin*, Gray's Inn Square; *Motteram*, Birmingham. Oct. 6.
Clope, Moses, Hastings, Sussex, Draper. *Belcher*, Off. Ass.; *Ashurst*, Cheapside. Oct. 9.
Cockcroft, John, sen., and Abraham Fletcher, jun., Manchester, Stuff Merchants. *Joksson & Co.*, Temple; *Haifield*, Manchester. Oct. 9.
Channon, Henry, Bruton Street, Berkeley Square, Haberdasher. *Abbott*, Off. Ass.; *Newton & Co.*, Ely Place. Oct. 16.
Chitty, Manwaring, Farnham, Surrey, Auctioneer. *Johnson*, Off. Ass.; *Aiken & Co.*, Cheapside. Oct. 20.
Chambers, Charles John, Leeds, York, Oil Merchant. *Chester* Staple Inn; *Chapman & Co.*, Manchester; *Foden*, Leeds. Oct. 20.
Deane, James, Charles Street, Berkeley Square, Auctioneer and Commission Agent. *Belcher*, Off. Ass.; *Goddard*, King Street, Cheapside. Oct. 6.
Dannenberg, Henry Frederick William, Stangate Street, Lambeth, Surrey, Victualler. *Belcher*, Off. Ass.; *Loxley & Co.*, Cheapside. Oct. 20.
Ewbank, Cooper, Liverpool, Commission Agent and Merchant; and of Aston, Chester, Zinc Manufacturer. *Bevan*, Liverpool; *Meredith & Co.*, Lincoln's Inn. Oct. 9.
Francis, John (ogun, late of Castle Cary, Somerset, Corn Factor. (Since residing at Dorking, Surrey.) *Frampton*, South Square, Gray's Inn; *Miller*, Frome Selwood. Sept. 22.
Fowler, Thomas, Manchester, Distiller and Spirit

- Merchant. *Cooper & Co.*, Manchester; *Adlington & Co.*, Bedford Row. Sept. 29.
- Fletcher, Abraham, jun., Manchester, Stuff Merchant. *Hatfield*, Manchester; *Johnson & Co.*, Temple. Sept. 29.
- Faulkner, Thomas Jones, Manchester, Joiner and Builder. *Clarke & Co.*, Lincoln's Inn Fields; *Foulkes*, Manchester. Oct. 9.
- Ford, Charles, Hanley, Stafford, Grocer. *Price & Co.*, Lincoln's Inn Fields; *Bishop*, Shelton Hall. Oct. 23.
- Green, George How, and George Courthorpe Green, Peckham Mills, near Tonbridge, Kent, Paper Makers. *Edwards*, Off. Ass.; *Harman*, Earl Street, Blackfriars. Sept. 25.
- Golland, William Clark, Cambridge, Linen Draper. *Hosier*, and Mercer. *Pennell*, Off. Ass.; *Wood & Co.*, Falcon Street, Falcon Square. Oct. 23.
- Garratt, Thomas, and Joseph Garratt, Hulme, Manchester, Common Carriers. *Hall*, Manchester; *Heald*, Austin Friars, London. Oct. 23.
- Harris, Benjamin, Fressingfield, Suffolk, Cattle Dealer. *Read*, Halesworth; *Francis & Co.*, Monument Yard. Oct. 6.
- Hicken, Thomas, Kidderminster, Worcester, Coach Maker. *Vincent & Co.*, Temple; *Boyce*, jun., Kidderminster. Oct. 6.
- Hogg, Benjamin Arnley, Leeds, York, Maltster. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Dunning*, Leeds. Oct. 9.
- Hancock, Richard, Bath, Brush Manufacturer, *Frankham & Co.*, Basinghall Street; *Physick*, Bath. Oct. 16.
- Hancock, William, Bath, Brush Maker. *Frankham & Co.*, Basinghall Street; *Physick*, Bath. Oct. 16.
- Hedley, John, Morpeth, Chemist and Druggist. *Tysack & Co.*, Newcastle; *Louvy*, Crosby Hall Chambers, Bishopsgate Street. Oct. 16.
- Hawkes, William, and John Johnson, Coventry, Ribbon Manufacturers. *Cox & Co.*, Lincoln's Inn Fields; *Wilnot*, Coventry. Oct. 20.
- Hutchinson, William, Bramley, Leeds, York, Woollen Cloth Manufacturer. *Hawkins & Co.*, New Boswell Court; *Ray & Co.*, Leeds. Oct. 20.
- Knowles, John, Stalybridge, Ashton-under-Lyne, Lancaster, Cooper. *Clarke & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Oct. 6.
- Light, Richard, Hanley, Stoke-upon-Trent, Stafford, Grocer and Provision Dealer. *Graham*, Old Jewry; *Jones*, Newcastle-under-Lyne. Oct. 9.
- Law, Richard, Manchester, Banker. *Johnson*, Off. Ass.; *Norris*, New Square, Lincoln's Inn Oct. 13.
- Murch, Henry, Pancras Lane, London, Metal Dealer. *Abbott*, Off. Ass.; *Chaplin*, Gray's Inn Square; *Mottram*, Birmingham. Sept. 22.
- Macpherson, Jane, Charlotte Macpherson, and Ann Robertson, Albermarle Street, Piccadilly, Milliners and Dress Makers. *Pennell*, Off. Ass.; *Allen & Co.*, Carlisle Street, Soho. Sept. 25.
- Martin, William, Woodchester, Gloucester, Clothier. *Shearman & Co.*, Gray's Inn; *Paris*, Stroud. Sept. 29.
- Mathew, Edward, Kennington Row, Lambeth, Surry, Plumber, Painter, and Glazier. *Turquand*, Off. Ass.; *Gough*, Leicester Street, Leicester Square. Oct. 2.
- Moore, James, Old Bond Street, Hatter and Army Accoutrement Maker. *Abeger*, Off. Ass.; *Walker*, Southampton Street, Bloomsbury. Oct. 9.
- Milner, John Turner, and Colley Bedford, Kingston-upon-Hull, Confectioners. *Lightfoot & Co.*, Hull; *Walmley & Co.*, Chancery Lane. Oct. 20.
- Mason, William, St. James's Street, Hotel Keeper. *Lackington*, Off. Ass.; *Robinson*, Half Moon Street, Piccadilly. Oct. 23.
- Miller, Richard, jun., Blue Anchor Road, Bermondsey, Surry, Glue Manufacturer. *Green*, Off. Ass.; *Wood & Co.*, Corbet Court, Gracechurch Street. Oct. 23.
- Matthews, Morritt, Little Town, near Leeds, York, Dyer. *Bower & Co.*, Tokenhouse Yard; Messrs. *Carr*, Gomersal. Oct. 23.
- Miller, Isaac, Liverpool, Share Broker and Commission Agent. *Payne*, Liverpool; *Adlington & Co.*, Bedford Row. Oct. 23.
- Newby, Marinduke, Northampton, Merchant and Maltster. *Austen & Co.*, Gray's Inn; *Flesher & Co.*, Northampton. Oct. 2.
- Nicholson, Hatfield, Canterbury, and Thomas Baylis of Whitstable, Kent, Coal Merchants and Carriers by Railway. *White & Co.*, Canterbury; *Taylor & Co.*, Bedford Row. Oct. 16.
- Osland, William Henry, Noble Street, London, Commission Agent and Woollen Manufacturer. *Lackington*, Off. Ass.; *Ashurst*, Cheapside. Oct. 6.
- Oddie, William Lister, Clithero, Lancaster, Cotton Spinner. *Douglass & Co.*, Verulam Buildings, Gray's Inn; *Alcock*, Skipton. Oct. 9.
- Owen, Griffith, Esail (chaf, Penmorfa), Carnarvon, Maltster. *Williams*, Hatton Garden; *Breece*, Pwllheli. Oct. 9.
- Pritchard, John, Witney, Oxford, Ironfounder and Brickmaker. *Close*, Furnival's Inn; *Leake*, Witney. Sept. 23.
- Potter, William, Plymouth, Devon, Draper. *Bayley*, Plymouth; *Drake*, Bouverie Street, London. Sept. 25.
- Pollock, Joseph Heald, Peter Thomson, and Joseph Doan Whitaker, Manchester, Merchants. *Walker*, Furnival's Inn; *Blackburn*, Leeds. Oct. 6.
- Perratt, John, Yeovil, Somerset, Wine and Spirit Merchant. *Hayward*, South Petherton; *Knos*, Hart Street, Bloomsbury. Oct. 6.
- Phillips, John, Stafford, Commission Agent. *Rushworth*, Staple Inn. Sept. 22.
- Page, John, Weedon Beck, Northampton, Carpenter and Builder. *Capes & Co.*, Field Court, Gray's Inn; *Roche*, Daventry. Oct. 20.
- Rogers, Thomas, late of Kevonlla Farm Llanbad-dock, Monmouth, Cattle Dealer, but now of the city of Bristol. *White & Co.*, Bedford Row; Messrs. *Bevan*, Bristol. Sept. 22.
- Robinson, James, Leeds, York, Cloth Merchant and Cloth Dresser. *Fidury*, Serjeant's Inn, Fleet Street; *Blackburn*, Leeds; *Barr & Co.*, Leeds. Sept. 22.
- Reeve, John Thomas, Gravesend, Kent, Victualler. *Belcher*, Off. Ass.; *Dimmock*, Skinner's Place, Size Lane. Oct. 2.
- Rollason, John, Aston nigh Birmingham, Roller of Metals. *Stafford*, Buckingham Street, Strand. Oct. 9.
- Sumner, James William, Reading, Berks, Builder. *Weston*, Reading; *Hill*, Copthall Court, London. Sept. 22.
- Smyth, Thomas, Marchmont Street, Brunswick Square, Perfumer. *Groom*, Off. Ass.; *Smith*, New Inn. Sept. 29.
- Sancell, John, Ramsgate, Kent, Boarding-house

Keeper. *Pennell*, Off. Ass.; *Newbon & Co.*, Great Carter Lane, Doctors' Commons. Oct. 9.

Simmonds, George, Bear Yard, near Lincoln's Inn Fields, Carpenter and Builder. *Pennell*, Off. Ass.; *Collier & Co.*, Carey Street. Oct. 16.

Sugars, Charles, Carey Street, Lincoln's Inn Fields, Coal Merchant. *Lackington*, Off. Ass.; *White & Co.*, Lincoln's Inn Fields. Oct. 20.

Silcox, Jacob, Warminster, Wilts, Carpenter and Joiner. *Chapman*, Warminster; *Holme & Co.*, New Inn. Oct. 20.

Shaw, John, Dobeross, Saddleworth, York, Wool-len Manufacturer, Merchant and Shopkeeper. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Oct. 23.

Taylor, Josiah, Pall Mall, Dealer in Pictures. *Cassan*, Off. Ass.; *Goddard*, King Street, Cheapside. Sept. 29.

Taylor, Thomas, and Elisha Taylor, Rawmarsh, York, Earthenware Manufacturers. *Taylor*, John Street, Bedford Row; *Badger*, Rotherham. Oct. 9.

Thomas, James Walter, and Sarah Thomas, Bristol, Hotel Keepers, and Wine and Spirit Dealers. *White & Co.*, Bedford Row; Messrs. *Beams*, Bristol. Oct. 29.

Woodhall, David, Studley, Warwick, Timber Merchant. *Nelson*, Middle Temple; *Browning*, Redditch. Sept. 22 & 25.

Wilson, James, Manchester, Lancaster, and of Worksoop, Nottingham, Commission Agent and Maltster. *Adlington & Co.*, Bedford Row; *Lees*, Manchester; *Mortimer*, Manchester. Sept. 22.

Wright, Thomas, Birmingham, Coach Maker. *Chilton & Co.*, Chancery Lane; *Suckling*, Birmingham. Sept. 22.

Willcocks, Thomas, Bristol, Cabinet Maker and Upholsterer. *Edwards*, Off. Ass.; *Rush*, Austin Friars. Sept. 25.

Wightman, Jasper, Old Jewry, London, and of Mitcham, Surrey, Silk and Woollen Printer. *Abbott*, Off. Ass.; *Reed & Co.*, Friday Street, Cheapside. Oct. 6.

Wood, Edward, Nottingham, Iron Merchant. *Clowes & Co.*, Temple; *Colts* or *Corne*, Stourbridge, Worcester. Oct. 6.

Worsley, William, Manchester, Flour Dealer. *Bower & Co.*, Chancery Lane; *Barratt*, jun., Manchester. Oct. 9.

Wootton, John, and William Wootton, Birmingham, Refiners and Metal Dealers. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Oct. 9.

Weight, John, Chipping Sodbury, Gloucester, Victualler. *Parker*, Chipping Sodbury; *Pinniger & Co.*, Gray's Inn Square. Oct. 9.

Widgery, Charles Back, Bristol, Leather Seller. *Crosby*, Bristol; *Bicknell & Co.*, Lincoln's Inn Fields. Oct. 16.

Walker, Samuel, jun., Clifton, Dewsbury, York, Coal Merchant. *Richards & Co.*, Lincoln's Inn Fields; *Barber*, Brighouse, near Halifax. Oct. 20.

West, Henry, Tibenham, Norfolk, Draper and Grocer; and of Aslacton in the same county, Draper, Tailor and Grocer. *Jay*, Norwich; *Helme*, Raymond Buildings, Gray's Inn. Oct. 20.

Wolf, William, Huddersfield, York, and of the City of Hamburg, General Merchant. *Jaques*, & Co., Ely Place; *Hesp & Co.*, Huddersfield. Oct. 23.

Young, William, Skipton, York, Linen and Wool-len Draper. *Douglass & Co.*, Verulam Build-ings, Gray's Inn; *Aleoch*, Skipton. Oct. 13.

PRICES OF STOCKS, Tuesday, Oct. 27, 1840.

Bank Stock div. 7 per Cent. - - - - - 161½
 3 Per Cent. Reduced - - - - - 86½
 3 per Cent. Consols Annuities 87½ a ½ a ½ a ½
 3½ per Cent. Annuities, 1818 - - - - - 95
 3½ per Cent. Reduced Annuities - - - 96 a 5½
 New 3½ per Cent. Annuities 97 a 6½ a 7½ a 6½ a 7
 Long Annuities expire 5th Jan. 1840 - - 12½ a 1½
 Anns. for 30 yrs. exp. 11th Oct. 1859 - 12½ a ½
 India Bonds 3 per Cent. - - 10s. a 12s. a 10s. dis.
 Bank Stock for Account 26th Nov. - - - 162
 3 per Cent. Cons. for Acct. 26th Nov. 87½ a ½
 a ½ a ½
 Exchequer Bills 1000l. at 2½d. par. a 3s. a 1s. dis.
 Ditto 500l. at 2½d. par. a 2s. a 1s. a par.
 Ditto Small at 2½d. par. a 2s. a 3s. dis. a par.

THE EDITOR'S LETTER BOX.

"A Subscriber," who was admitted last Easter Term, but being desirous of remaining with the gentleman to whom he was articulated, did not take out his annual certificate, is informed, that according to some of the decisions, he need not take out his certificate till he begins to practise. See the decisions collected, 13 L. O. 259; 15 L. O. 135; and see 18 L. O. 294.

The following copy of a circular, proposing to conduct law agency on cheap terms, has been sent us: we withhold the name.—"It must have occurred to you in the course of your experience, in the conducting of actions at common law, that the charges of London agents are very high, and prevent the possibility of the country attorney deriving but a trifling, if any, profit upon the common law practice. I have for some years done a very extensive business in the country, and have always found that the greater portion of the profit has been received by my agents in town. I have therefore come to the determination of opening an office in town, and intend conducting the agency for myself and partner, and also for those friends who may entrust me with any agency business. My charges will be made upon a far more moderate scale than those generally observed by agency offices."

J. B. W. thinks that *Binns v. Pigot*, 9 C. & P. 208, stated *ante*, p. 483, does not invalidate the case of *Yorke v. Greenhaugh*, Lord Raym. 866, as we there suggested. In the latter case it was held, that the fact of leaving a horse at an inn makes a man a guest. "If a man set his horse at an inn that makes him a guest, though he lodges in another place." In *Binns v. Pigot* the horse appears to have been taken to the inn by some one, probably the police constable, who as it appears to us, would according to *Yorke v. Greenhaugh*, have been held for this purpose to be the guest, and that the right owner would be liable for the keep. It is to this extent that the two cases seem to clash.

The various questions relating to Examination, Admission, and Certificate Duty, shall be considered at an early opportunity.

The recommendation from Lymington, regarding an application to strike an attorney off the roll, shall be attended to.

The communication of W. W., on the rights of advocates, shall have our best consideration.

DIGESTED INDEX

TO THE

CASES REPORTED IN VOLUME XX.

AFFIDAVIT.

1. The Court of Queen's Bench in England will not allow a party to read an affidavit, where the jurat of it shews that it has been made before a Commissioner of the Queen's Bench in Ireland.

It is necessary that the affidavits in support of an application for the purpose of obtaining a copy of documents, of which it is presumed more than one copy has been made, should shew that only one copy has been made. *Griffin v. Smithe* Page 302

2. The Court will not compel a party to deliver copies of exhibits made on an inquiry before the Master, where the enquiry is at an end. *Duvenport v. Jones* 301

ARBITRATION.

An award is not published unless such notice is given of its having been made as will enable the parties to become acquainted with its contents.

Notice of an award being ready for delivery at a certain hour on a certain day, the notice being on a day previous to that day, and the parties' attorneys attending at the hour and on the day appointed, but one of the parties dying at an earlier hour in the same day on which the award was so published: Held, that the award had not been published in the life-time of the party deceased.

Where an award is made pursuant to a Judge's order, an application to set it aside must be made within the time limited by the 9 & 10 Wm. 3. *Brooke v. Mitchell* 239

APPEAL.

No appeal lies to the Lord Chancellor against an order made by the Master of the Rolls, on a petition presented under the act of the 52nd of George 3, chap. 102. *In re Royston Grammar School* 12

ASSETS.

In case of a deficiency of assets to pay creditors, the costs in a creditors' suit relating to the realization of assets must be classified, and borne by the particular fund to which they relate, *e. g.* those incurred in realizing legal assets by the produce of those assets, and *e converso*. *Clark v. Wenn* 236

ATTACHMENT.

By act 41 G. 3, c. 90, s. 6, any decree or order to pay money made by the Court of Chancery in Ireland, may be certified to the Court of Chancery in England, and the Lord Chancellor in England shall cause such decree or order, when presented to him so exemplified, to be enrolled, and shall cause process to issue: Held, that not only the decree, but all the subsequent proceedings, must be certified to enable this Court to issue process, &c. *Haig v. Homan* Page 186

ATTORNEY.

1. A plaintiff at whose suit a defendant had been charged in execution, became bankrupt; his attorney in the country proved under the fiat; the London agents afterwards signed an order, directed to the marshal, and authorising the discharge of the person in custody under the execution; in consequence of which he was discharged. The assigness of the plaintiff in the suit afterwards brought an action, and recovered against the marshal as for an escape. The Court granted a rule, calling on the attorney and the agents to shew cause why they should not pay to the marshal the money recovered from them by the assignees. *The Marshal of the Queen's Bench Prison, in re Willmot, Ex parte Capes and Stuart* 334

2. Where an affidavit of merits is made by an attorney's clerk, who describes himself as the managing clerk of the attorney, in order to render it sufficient, it is necessary that the affidavit should state that he had the management of the particular cause in question. *Doe d. Fish v. McDonnell* 335

3. Where an action is brought for an attorney's bill, containing taxable items, the Court will order it to be taxed, without the client giving the usual undertaking to pay what should be found due on taxation. *William v. Griffiths* 207

4. In support of an application for an attachment against an attorney for not delivering up papers pursuant to an order of a judge, subsequently made a rule of Court, by which the attorney was required to deliver all deeds in his possession of the lessor of the plaintiff, on payment of the amount of the Master's allocatur, it was sworn that the copies of the order and rule were served upon the attorney, and the demand made by a person who paid the amount of the allocatur: Held, that as there was no proof of the authority of the person

paying to receive the papers on behalf of the lessor of the plaintiff, the demand was insufficient. *Doe d. Hickman v. Hickman*. Page 141

5. The Court will grant a rule nisi requiring an attorney to answer the matters in the affidavit, in respect of certain misconduct of the attorney in appropriating money to his own use, for the recovery of which a bill has been filed in equity. *Anon.* . . . 125

6. An attorney proposing to be struck off the roll at his own request, need not swear that he has taken out his certificate, if he swears that he has been duly admitted, and that he expects no proceeding to be commenced against him. *Ex parte Partridge* . . . 141

7. Where an enrolment of an assignment has not taken place within six months after execution, the Court will, under special circumstances, allow the clerk to be examined *de bene esse*. *Ex parte Hair* . . . 125

AUDITORS.

A testator directed his trustees to submit the accounts of the trust property annually to be audited by a barrister of judgment and experience, and to pay him such annual remuneration as was usual for auditors to receive. The Court refused to alter the allowance named by the Master, upon consideration of the duties and responsibility of the office, although the trouble was slight and the sum allowed far exceeded what the auditor was paid for several years. *Attorney General v. Cleave* . . . 155

BANKRUPT.

1. Goods sent on sale or return, are not to be considered as sold and delivered, till the person to whom they are so sent has exercised his option as to keeping them, and if before he has done so he becomes bankrupt, such goods will not pass to his assignees. *Smith v. Poore and another, assignees of Richardson, a bankrupt.* 383

2. The 2 & 3 Vic. c. 29, has a retrospective operation. Goods of *B.* were seized under an execution, on the 12th of July. and were sold on the 15th; on the 18th, a fiat in bankruptcy issued against *B.*; on the 19th, the act passed and came into operation; and on the 31st, the assignees were appointed: Held, that the seizure was protected by the act, and that the assignees could not recover the amount of the sale, as money received to their use. *Nelstrop v. Scarsbrick* . . . 463

BILL OF EXCHANGE.

A plea in answer to a declaration in the common form of a bill of exchange averred that the bill was accepted in payment of a debt to *F.* (the drawer), that *F.* indorsed it in blank, and delivered it to the plaintiff as agent for *R.*, and in payment of a debt due from *F.* to *R.*, and that the plaintiff, in violation of his duty, retained the bill. After verdict for the defendant, the Court held this plea a sufficient denial of the ordinary allegation in the declaration of an indorsement to the plaintiff.

The Court will not direct a judgment *non obstante veredicto*, except in a clear case, when the party in whose favor the verdict has been given has no merits. *Adams v. Jones* . . . Page 286

CHURCH RATES.

Where the parishioners in vestry assembled have refused to make a church rate, the churchwardens cannot of their own authority, even though the church is in want of repair, make a rate for that purpose. Where such a rate is made by the churchwardens alone, and a suit instituted in the Ecclesiastical Court to enforce it, the Common Law Courts are bound to interfere by prohibition. *Burder v. Veley* 71

CHURCHWARDENS.

The right of declaring an adjournment in the case of a meeting of the parish, for the election of churchwardens, and of appointing the time and place of continuing such election by a poll, is in the rector. *The Queen v. The Rector of Lambeth* . . . 285

COPYHOLDS.

It is a good custom in a manor to require a separate admission connected with a description of the land surrendered, instead of a general admission, merely describing generally the land previously surrendered. *Reg. v. Steward of the Manor of Bishopstoke* . 191, 505

COPYRIGHT.

1. The Court will not grant an injunction to restrain the publication of a work on a charge of piracy, where the party complaining has suffered a considerable time to elapse previous to his commencing proceedings, and there were strong reasons why his attention should have been called to the work; notwithstanding he may aver that he was not aware of the piracy until shortly previous to the filing of his bill. *Lewis v. Chapman* . . . 299

2. Acquiescence on the part of a trader, complaining of an alleged piracy by the fraudulent use of his marks, is a sufficient reason against the grant of an injunction to restrain the use of such marks, and the complainant will be left to establish his right at law. *Crowshay v. Thompson* . . . 382

COSTS.

1. Although it appears probable that the defendant may not be able to get easily his costs of the day from the plaintiff, for not proceeding to trial, the Court will not grant a stay of proceedings on that account. *Aime v. Chinnock* . . . 287

2. If a judge intimates his intention to certify under 43 Eliz. c. 6, to deprive the plaintiff of costs, the *postea* should not be delivered out until the certificate has been given, and a taxation which takes place notwithstanding in favour of the plaintiff may be set aside. *Davis v. Cole* . . . 286

3. Circumstances in which a bill, though the case made by it fails in point of law, may be dismissed without costs by reason of a false defence to it. *Field v. Churchill* . 283

CRIMINAL INFORMATION.

A party applying for a criminal information, and proceeding on the 6 & 7 W. 4, c. 76, must not only produce a certificate from the stamp office according to the terms of the 8th section of that statute, but he must also annex to his affidavit a copy of the paper to which such certificate relates. He must also draw up the rule as "upon reading the paper, &c." *The Queen v. Woolmer and another* . 138

EJECTMENT.

1. A third person having and claiming no interest in property sought to be recovered in an action of ejectment, in which the plaintiff is successful, cannot be compelled to pay the costs of it, where the defendant is insolvent, although he may have influenced the defendant to defend the action, and supplied him with some funds to proceed with the defence, and that from vexatious motives. *Doe d. Wright v. Smith* . 334

2. In an action of ejectment, the defendant, after entering into the consent rule, did not appear at the trial to confess lease, entry, and ouster. The plaintiff was accordingly nonsuited. An application was afterwards made to restore the cause to the list; but, on cause being shewn, the Court thought that the proper application should have been to set aside the nonsuit, and therefore discharged the rule. *Doe d. Fisk v. Macdonnell* . 302

3. Service in ejectment where there are several tenants. *Doe d. Ludford v. Roe* 303

4. In an action for the recovery of a chapel and free school, a service is sufficient on the minister, one of the trustees, and by sticking up a copy on the door of the chapel and the school, as well as serving the master. *Doe d. Smith v. Roe* . 303

5. An amendment in a declaration in ejectment in the christian name of the lessor of the plaintiff will not be allowed where the tenant has not appeared. *Doe d. Street v. Roe* . 368

6. A deed of mortgage contained the following stipulation: "that *I. B.* shall, during his occupation, pay for the same to *I. G.* (the mortgagee) the yearly rent or sum of 50*l.*," and then went on to give "the same remedy for the recovery of the said sum as a landlord has for the recovery of his rent: provided that nothing herein shall prejudice *I. G.* in his right to enter and take possession of the premises, and to evict *I. B.* at any time after default." Held, that this clause did not create the relation of landlord and tenant, but merely added a remedy to that which the mortgagee had before, so that ejectment was maintainable after a distress made. Where a surrender has taken place out of Court, and an admittance has afterwards been made thereon, the Court

rolls are the best evidence of that surrender and admittance, and may be received in evidence for the purpose of proving such surrender, though they are without a stamp. *Doe d. Garrod v. Ottley and another, assignees of Harper, a bankrupt.* Page 316

7. The 4 & 5 W. 4, c. 76, and the 5 & 6 W. 4, c. 69, have not divested the legal estate in workhouses out of the overseers so as to disable them from being plaintiffs in an ejectment to recover property belonging to their parish. Where a rated inhabitant, called as a witness in a matter relating to parish property, described himself as liable to the costs of the suit, but afterwards explained his meaning by saying that he was so because he was liable to pay his share of the rates out of which the costs must be defrayed, he was held not to be rendered inadmissible as a witness by such declaration. *Doe d. Norton v. Webster* . 415

8. Service on the sister of the tenant in possession on the premises, with an acknowledgment by the sister that the copy had been given to the tenant before the term, is sufficient to entitle the plaintiff to a rule nisi for judgment against the casual ejector. *Doe d. Trotter v. Roe* . 159

9. If at the trial of an ejectment, the defendant does not appear to confess lease, entry, and ouster, and the plaintiff is consequently nonsuited, the proper course for the defendant to pursue in order to obtain relief is to move to set aside the nonsuit. *Doe d. Gluscock v. Willes* . 159

EVIDENCE.

Where an original deed was not produced at a trial, secondary evidence was sought to be given of its contents by parol: Held to be admissible, although an attested copy was in existence which was not admissible, on account of an insufficient stamp. *Doe d. Gilbert v. Ross* . 31

HORSES.

A gentleman going to buy a horse, and getting permission to try it, may not only ride it, but may *bond fide* put a groom on it to try it, and assist him in forming an opinion of its value. *Lord Camoys v. Scurr, clerk* . 124

INTERPLEADER.

After an estate has been re-sold by auction in consequence of the purchaser's default in completing his contract, the Court will restrain the second purchaser from proceeding at law to recover his deposit, pending a suit instituted by the first purchaser for a specific performance. *Hoggart v. Cuts* . 397

JUDGMENT.

1. Where a declaration in assumpsit claimed a specific sum pursuant to a contract, and judgment was suffered by default, the plaintiff was held entitled to recover the sum mentioned, without producing any evidence. *King v. Benk* . 287

2. A motion for judgment as in case of a nonsuit is too early where the motion is made in Easter Term, and issue was not joined until Michaelmas vacation. *Duggan v. Wilbraham*, Page 303

LANDLORD AND TENANT.

A tenancy must be created by contract, but there need not be evidence of an express contract given, if from the circumstances of the case, the assent of the parties to create the relation of landlord and tenant may be implied. *Brown v. Storey* . . . 14

LEGACY.

A sum of money paid in respect of a verbal direction of a dying person, is not a discharge of a legacy of like amount given to the same party by the same person's will; nor can it be recovered or set off against the demand of the latter legacy, there being no mistake or misapprehension of law on the part of the person paying. *Metford v. Peters* . . . 202

LIBEL.

A printer who prints for the purpose of circulation, slanderous matter against an individual, is responsible for every copy of the printed slander, thus circulated, however numerous the persons may be by whom it is circulated. *Chancellor v. Denne* . . . 206

LUNATIC.

1. It is no objection to the issue of a writ of *distringas*, that the defendant is a lunatic, and confined in an asylum, in which the plaintiff cannot obtain access to him. *Rawson v. Moss* 206

2. Where a person has been found a lunatic under a writ *de lunatico inquirendo*, the Court will not, in a suit instituted for the purpose of setting aside a conveyance by the alleged lunatic, take upon itself to determine between conflicting evidence as to the question of sanity, but will direct an issue. *Price v. Ber- rington* . . . 187

MAGISTRATE.

1. A justice of the peace cannot on the information of another person, that *A. B.* can give material evidence on an indictment, issue a warrant to compel *A. B.* to find sufficient sureties to appear and give evidence on such indictment. Whether the justice has power to issue such a warrant or not, he can only have it upon his personal acquaintance with the fact that *A. B.* can give such evidence. *Egan v. Rees, Esq.* . . . 140

2. All acts which are to be done by the justices at petty sessions, ought to be done according to the will of the majority, which it is the duty of the chairman to ascertain, in the ordinary and regular manner. *The Queen v. William Garnet, William Smith, John Bentley, and John Greaves, Esqrs. Justices of Lancashire* . . . 269

MANDAMUS.

1. In a case in which the crown claimed the right of nominating to a deanery, and the members of the chapter of the cathedral church claimed in opposition thereto to elect the dean from among their own body, and had actually made the election and instituted the dean, a mandamus to the chapter to proceed to qualify and then to elect the nominee of the crown, was refused. *The Queen v. The President and Chapter of the Cathedral Church of Exeter* Page 365

2. An error in the discretion of magistrates in refusing to give possession of premises, pursuant to 11 G. 2, c. 19, s. 60, is not a ground for issuing a mandamus to compel them so to do. *Ex parte Fielder* . . . 141

MARRIAGE.

A person born before the marriage of his parents, though subsequently legitimated in Scotland by their marriage there, and thus rendered capable of succeeding as heir to his father in that country, will have his personal status of legitimacy acknowledged in England, but cannot, in virtue of such acquired legitimacy, succeed to real estate here. *Birtchistle v. Vardil* . . . 380

MORTGAGE.

1. Where an account of principal and interest has been settled between the mortgagor and mortgagee after the mortgagee has taken possession of the mortgaged property, and the rents subsequently received are more than sufficient to satisfy the accruing interest, the mortgagor is entitled to annual rests, though there was an arrear of interest due to the mortgagee at the time of his taking possession. *Wilson v. Clewer* . . . 364

2. Where questions arise as to the rights of equitable mortgagees, and their claims are disputed by the assignees under a commission of bankruptcy issued against the parties who deposited the deeds, the Court will not as of course appoint a receiver on motion, and will not make any order until all parties interested in the mortgaged property are before the Court. *Fearnside v. Derham* . . . 331

3. Where a mortgagee takes possession of the mortgaged property, he will be liable to a fair occupation rent, though the property, being held with other premises, may not yield an apportioned rent equal to such occupation rent, and he must also account from the time he takes possession, even if the tenant becomes insolvent, and he is unable to recover the rent which has accrued. *Fulkner v. Matthews* . 462

4. Where an arrear of interest is due upon a mortgage, at the time a mortgagee takes possession of the mortgaged property, the mortgagor is not entitled to interest on any surplus rent received by the mortgagee after satisfaction of the interest annually payable on the mortgage. *Finch v. Brown* . . . 268

OVERSEER.

The overseers of a parish are bound under the 5 & 6 Wm. IV. c. 76, s. 15, to make out a list of all the persons in their parish entitled to be on the burghess roll. If they neglect to do so, they are liable to the penalty imposed by the 48th s. of that statute, and they are so whether their neglect was accidental or wilful. Where a parish is divided into wards, and has several different overseers, all must sign such list, and the omission of any one of them renders him liable to the penalty. The name of the overseer appearing in the list and in his own hand-writing, but not being signed to it, will not exempt him from the penalty. The meaning of sign in the act is putting the name at the bottom of the list. *King v. Burrell* . . . Page 188

NOTICE.

The words in the 19th s. of the 4 & 5 W. 4. c. 51, "which summons shall be served upon every such person ten days at the least before the time appointed in such summons," mean ten clear days. A summons therefore which was dated and served on the 20th, requiring the party to appear on the 30th, was bad. Where in a statute, directing how a notice is to be given, the phrase "—days at the least," or "—clear days" is used, it must be taken to mean so many days exclusive of the day on which the notice is given. *Mitchell v. Foster* 221

PARTNERSHIP.

The representative of a deceased partner is entitled to call for an immediate sale and division of the partnership property, where there are no stipulations to the contrary. Surviving partners have no exclusive right to goodwill. *Barns v. Douglas* . . . 156

PAUPER.

Under certain circumstances, a defendant in an indictment for a misdemeanor which has been removed into this Court by a writ of *certiorari* may be admitted to defend in *forma pauperis*. *Reg v. Nicholson* . . . 159

PENSIONS.

A. assigned to B. for valuable consideration, an annual sum granted to him during pleasure, as compensation for an office which he had held, and which was abolished; and he subsequently took the benefit of the Insolvent Debtors' act. The Lord Chancellor affirmed an order made by the Vice Chancellor, upon motion by B., to restrain the agent of the grantors of the pension from paying any money in his hands for that purpose to A., or any person claiming under him, until the title to it should be ascertained at the hearing of the cause. *Tunstall v. Sir W. Boothby* . . . 102

PLEADING (EQUITY.)

The heir at law is a necessary party to a suit for the administration of real assets, though he

may not be beneficially interested. *Griffiths v. Pruett* . . . Page 219

PLEADING (COMMON LAW.)

1. In an action of trespass for taking the soil of a river, and the oyster spat adhering thereto, the defendant pleaded the common right of all subjects to fish in a navigable river. The replication set forth that the spat was the brood of young oysters, and traversed the right to take the soil of the river and the spat. The rejoinder alleged an immemorial right in the subjects to take spat in the said river: Held, that on the face of the pleadings it was sufficiently shewn that the spat was the young oysters, and that the defendant did not set up any right to take the young of fish, and therefore did not answer the allegation in the declaration. *The Mayor of Maldon v. Woolvet* 399

2. A common *similiter*, though added by a party for himself, does not require to be dated. It is not a pleading within the meaning of the Reg. Gen. Hil. T. 4 W. 4. *Edden v. Ward* 158

3. It is not necessary to sign with an original signature the plea delivered, as it is sufficient that the draft is signed. *Salter v. Ponsford* 45

4. If a demurrer professes to be to the whole declaration, and it assigns separate causes of demurrer to each count, it is a demurrer to the whole declaration. *Purcell Navigation Company v. Stower* . . . 224

5. In the declaration the plaintiff alleged the issuing of a *testatum fi. fa.*, which was lodged with the defendant for execution, and that the defendant seized the goods of one W. under the said writ, and remained in possession of the same for a long space of time, without selling them, when he returned that he had taken the goods, and that they remained in his hands for want of buyers: Pleas, that the defendant did not seize the goods of W. or remain in possession under the writ; that the defendant could not during the time mentioned have sold the goods; and that the goods were vested in the official assignee of the estate of W. by virtue of a fiat in bankruptcy: Held, that the first plea was bad for duplicity; that the second was bad as amounting to the general issue, and that the third plea was an argumentative denial that the goods seized were the goods of W. *Rowe v. Ames* . . . 415

6. To an action for goods sold and delivered, the defendant pleaded as to 60*l.* parcel, &c., that the plaintiff had drawn, and that he had accepted a bill for 60*l.*, which the plaintiff had received and accepted on account of his claim. It appeared that the defendant had sent a blank acceptance for 60*l.* from the country to the plaintiff, but that the latter had subsequently drawn the bill, altering its amount to 46*l.* The bill, on its presentment, was not paid: Held, that the plea was no sufficient answer to the declaration, and that the plaintiff was entitled to a verdict. *Baker v. Jubber* 62

7. In an action brought in the name of the marshal of the Palace Court, for the benefit of a sutor in that Court against a bailiff for disobeying an order of the Court, it is not necessary that it should appear on the declaration that the plaintiff has been individually damaged. *Lamb v. Vice* . . . Page 62

8. A count on a charter-party, and a count on an implied contract to take proper care of goods in loading, may be allowed in the same declaration. *Vaughan v. Glenn* . . . 233

POLICEMAN.

1. A policeman may, by discovering evidence to enable a prosecutor to prosecute a felon to conviction, entitle himself to the reward which the prosecutor has offered to any one who will put him in possession of such evidence. It is not against public policy that the policeman should do so. *England v. Davison* . . . 44

2. The defendant, who was superintendent of police in the borough of Cambridge, and a constable of the borough, appointed by the watch committee under the 5 & 6 W. 4, c. 76, s. 76, seized and destroyed meat belonging to the plaintiff in the market at C., as being unfit for human food: Held, that this was not an act done "in execution of that statute," and that consequently he was not entitled to notice of action under s. 133. *Clark and Parish v. Titterton* . . . 43

POOR RATE.

1. The London Missionary Society is sufficiently a charitable institution to be exempted from rateability to the poor, and where its secretary occupied premises solely for the purposes of the institution, he was held not liable to be rated in respect of such occupation. *The Queen v. T. Wilson* . . . 270

2. The cases applicable to rateability for the relief of the poor do not apply to rateability for the maintenance of the church. *The Queen v. T. Wilson* . . . 270

3. The property of a corporation, though situated in a parish which does not form part of the corporate town, is not liable to be rated to such parish. *The Queen v. Mayor and Town Council of Exminster* . . . 400

4. A school had been founded by voluntary subscription, and was chiefly supported in the same manner. The scholars, who were maintained and educated, were the children of parents in humble, but not in destitute circumstances, and a payment of 12l. a-year was required from each scholar: Held, that this constituted such a beneficial occupation in the trustees of the school as to render them liable to be rated for the buildings. *The Queen v. Sterry* . . . 236

PRACTICE (EQUITY).

1. A writ *de contumace capiendo* having become ineffectual in consequence of an application for a prohibition, which was refused,

this Court ordered a new writ to be issued, being satisfied by affidavit that the party was in contempt. *The Queen, on prosecution of Jolly v. Baines* . . . Page 267

2. This Court will not alter the date of its order from the day on which the order was applied for and granted to a prior day. *In re H—* . . . 235

3. Where an issue is directed at the instance of an heir at law to try the validity of a will, the Court will not compel devisees in remainder to be made parties, for the purpose of concluding their right to a further trial, upon the ground that the heir should not be twice vexed. *Blundell v. Gladstone* . . . 263

4. No order of any branch of the Court is to be treated as a nullity, how irregular soever it may be, but it must be discharged before a contrary order can be made. Where a decree was made in a cause at the Rolls, directing certain inquiries after the 20th of May, 1837, when the general orders of the 5th of May come into operation, and the report subsequently made being incomplete, was referred back by the Vice Chancellor to be reviewed, that act of the latter Court had not the effect of taking the cause from the Rolls. *Wilkins v. Stevens* . . . 123

5. It is irregular to bring a cause on for hearing for the purpose of taking the opinion of the Court on some questions in it, until the cause is ripe for a full hearing. *Mitford v. Reynolds* . . . 58

6. The Court cannot give the Vice Chancellor authority to discharge an order made by the Master of the Rolls. The Court will not grant, as of course, an application to fix a day for hearing a petition or motion; they must be brought on in their order, without displacing other petitions or motions. *Pearce v. Brooks* . . . 186

7. *Quære*, whether answer can be excepted to for insufficiency after motion to produce books and papers. *Lane v. Paul* . . . 156

8. The holder of an estate or of a charge on it, must, under the act 6 Anne, c. 18, produce to the owner or reversioner the person for whose life he holds it, once a year, if so ordered by the Lord Chancellor; and the Lord Chancellor will make such order upon motion and affidavit that the reversioner believes the person to be dead, and that the death is concealed. And the place of production will be the next parish church to the residence of the *cestui qui vie*, as described in the instrument forming the holder's title, within a given time. *In re Puckwood* . . . 204

9. Circumstances under which the Court will order a cause to stand over for want of parties, but will not give the costs of the day. *Stocken v. Belcher* . . . 221

10. The Lord Chancellor has no jurisdiction to give any decision in a petition of right referred to him with the general indorsement by the crown "let right be done to the party." All he has to do is to issue a commission, and upon return of the commissioners' inquisition, to issue a writ for the petitioner, to which the officer of the Crown may demur or plead, and

thereby a record is constituted for a Court of Law to hear and decide the question raised by the pleadings, on the merits. *Ex parte Baron de Bode, Ex parte Viscount Canterbury*

Page 217

11. Where accounts necessary to be gone into for the purposes of a defendant's case, are long and complicated, the Court will allow considerable time for putting in the answer to an amended bill, although the amendments may have been framed principally from documents and accounts produced by the defendant. *Oakley v. Lawley* . . . 235

12. The Court will not order the payment of a sum of money into Court where the title of the plaintiff is disputed by the defendant, even though it may appear from the defendant's answer that the sum claimed is in his hands. *Munro v. Graham* . . . 315

13. Where there is a clear admission in a defendant's answer of a balance being in his hands, the Court will order it to be paid into Court, although the defendant may urge his right to apply it in liquidation of a claim which he has against the plaintiff—*secus*, if he qualifies his admission by shewing that he has actually applied it to another account subsisting between him and the plaintiff. *Usher v. Johnson* . . . 478

14. Costs will be given against a plaintiff relative to the amendment of his bill, if oppressive or vexatious conduct can be established; but in general the Court discourages applications for the purpose of obtaining such costs. *Strickland v. Strickland* . . . 503

PRACTICE (COMMON LAW).

1. If a rule to compute has been obtained, the irregularity of the judgment on which it proceeds cannot be shewn as cause against it, but an opportunity will be afforded to apply to set the judgment aside, by staying proceedings on the rule. *Wyles v. Plaskett* . . . 463

2. Where a party describes himself as the person issuing and writ, a mentions his address without introducing the words "who resides at," according to the form given in the schedule attached to the Uniformity of Process Act, the omission does not invalidate the writ. *Coppice v. Hunter* . . . 336

3. An amendment will be allowed in a replication to a plea of *nul tiel record*, although a trial has taken place on an issue of not guilty on the same record. *George v. Rookes* . . . 335

4. Two causes were pending between the same parties. The same question arose in each. One was tried, and a verdict found for the defendant. The Court refused to stay proceedings in that cause until the trial of the second, on the ground that the plaintiff had discovered further evidence in support of his case. *Yates v. Dublin Steam Company* 223

5. An order for leave to amend a declaration, and an order for time to plead, were made on the same day: Held, that the time for pleading was to be calculated after the amendment had been made. *Davis v. Stanley* . . . 206

6. If an order is made *nihi* by a judge, and no step is taken by the opposite party to dis-

charge it, it will become absolute as a matter of course. *Humphreys v. Jones* . . . Page 238

7. Notice to produce at the Surrey assizes, Kingston, for Friday, is too late on Wednesday, when served at Kingston on the attorney, the client residing in Cumberland. *Williams v. Hillary* . . . 15

8. Notice of countermand of trial must be served on the defendant's attorney, and not on himself, although the former has no agent in the country. *Margetson v. Rush* . . . 46

9. A writ of summons must be issued, but need not be served before a *copias* is issued, but the Court will compel a plaintiff to serve a defendant with a copy in a reasonable time after issuing the *copias*. *Brooke v. Snell* . . . 125

10. The plaintiff brought an action to recover damages for certain goods damaged, and certain goods not returned, which had been deposited with the defendant to be taken care of. The particulars gave two lists of articles, some damaged, others not returned: Held, that articles of glass, which were broken, the fragments being restored, did not come within the latter description. *Moss v. Smith* . . . 73

11. Where a defendant's christian name cannot be discovered, although due diligence has been exerted to find it out, the Court will allow a distringas to issue in the defendant's surname only. *Smith v. Webb* . . . 61

12. Where a plaintiff has, before action brought, delivered the particulars of his demand, and afterwards in his particulars delivered with his declaration, he states that he seeks to recover a certain balance, and refers to the previous particulars, the case is not within the rule of 1 Vict. T. T. *Bosley v. Moore* . . . 207

13. If a party makes an application to the Court, which is unsuccessful on the ground of the defective manner in which the facts supporting the application are brought before the Court, the application will not be allowed to be repeated on amended materials, although they were in existence at the time when the first application was made. *Sanderson v. Westley* . . . 504

14. A defendant demurred to the second count of a declaration. The plaintiff obtained an order for leave to amend, the defendant having a month's time to plead. The plaintiff waited the month, and although the demurrer was not struck out, and no new plea pleaded, he signed judgment as for want of a plea: Held, that the meaning of the judge's order was, that the demurrer should be struck out, and therefore that the judgment was regular. *Davies v. Stanley* . . . 479

PRISONER.

The Court will take judicial notice of the handwriting of the clerk of the papers, certifying a copy of causes on an application to discharge a defendant under the 48 G. 3, c. 123. *Alcock v. Whatmore* . . . 141

PRIVILEGE.

Rule granted under the 3 Vict. c. 9, to stay proceedings in an action of libel, brought in

respect of a publication, certified by the speaker to have been made by the order, and under the authority of the House of Commons.

Quære whether the provision in the statute which required twenty-four hours' notice of motion to be given to the plaintiff, was intended to enable him to shew cause against the granting of the rule, or only to prevent him from incurring further needless expence.

The act applies to a case where a defendant has allowed the plaintiff to sign judgment by default against him. *Stockdale v. Hanard and others* Page 12

PROHIBITION.

1. In a writ *de contumace capiendo*, it is not necessary that it should appear that the cause of contempt arose within ten days after sentence pronounced in the Ecclesiastical Court. The writ need not literally follow the form given in the schedule to the statute. It will be good, though some superfluous words are omitted. The burden of shewing that the Court had no jurisdiction in consequence of the suit being for rates below the sum of 10*l.*, lies on the party impugning the writ. Process in an ecclesiastical suit may be good, though issued by an official principal against a party resident within the jurisdiction of a commissary, appointed within the limits of the same diocese. An inhibition from the bishop suspends the powers of a commissary as well in contentious as in voluntary jurisdiction. *The Queen v. Thorogood* 59

2. A suit for non-payment of church rates may, notwithstanding the statute 23 Hen. 8, c. 9, be instituted in the Court of Arches, in a case where the defendant resides within the diocese of a provincial bishop, and consequently where the defendant is necessarily cited out of the diocese in which he resides. A mere irregularity in an ecclesiastical court will not warrant a prohibition. *Jolly and another v. Burnes* 398

PROMISSORY NOTE.

1. In an action on a promissory note by an indorsee against the maker, the latter pleaded first, that he did not make the note, and secondly, that (for certain causes stated at large in the plea) he had signed his name to a paper stamped with a 3*s.* 6*d.* stamp, and had sent the paper to *A.* to fill in the note with the sum of 65*l.*, but that *A.* had filled it in with a sum of 100*l.* It was proved at the trial that such a message was sent to *A.*, but there was no proof that it was ever delivered to him. The jury having found for the defendant, the Court thinking that the evidence supported the plea that the defendant had not made the note, refused to disturb the verdict. *Rowland v. Evans* 13

2. What words will constitute a promissory note. *Shrivell v. Payne* 301

PROSECUTION.

1. The Court will not entertain a motion to obtain the names of the prosecutors of an in-

dictment, until the defendant has pleaded. The list of names of prosecutors of an indictment will, by consent, be given in such a manner as to prevent prejudice accruing to the defendant. *Reg. v. Nicholson* Page 271

2. Where an indictment has been preferred by a society, consisting of several members, and it is suggested that the indictment will be tried by a special jury, but the defendant has not pleaded, the Court will not require the prosecutors to give a list of the members of the society, to enable the defendant to strike the special jury. *The Queen v. Richardson* 14

RAILWAY.

1. This Court will not issue a peremptory *mandamus* to compel a railway company to purchase lands, and go on with the construction of the railway, except upon a clear proof that the company has abandoned its undertaking, and is evading the performance of the duties it undertook as the consideration for the powers it obtained from parliament. But the Court has the power to issue such a *mandamus*; and the Court will issue it if there appears good ground for believing that the company is wilfully making default. *The Queen v. The Eastern Counties Railway Company* 157

2. Where a bridge has been built by a railway company across a road, and a descent formed, which are not in strict conformity with the provisions of the act of parliament, but which are not productive of much inconvenience, the Court will not grant a *mandamus* to pull down the bridge and build another. *The Queen v. Eastern Counties Railway* 45

REPLEVIN.

1. In an action on a replevin bond, the declaration alleged that replevin had been granted by *M.*, one of the sheriffs of the city of London, and that the bonds having been taken by him, had been assigned by him to the plaintiff: Held, upon general demurrer that the declaration was good, and that it was unnecessary that the second sheriff should be alleged to have joined in the transaction. *Thompson v. Farden* 106

2. Where a plaint in replevin has been levied in the Sheriff's Court, and a writ of *recordari facias loquelum* is issued, the sheriff ought to make his return by stating positively whether there is any plaint pending in his Court, and not make a statement of all the proceedings which had taken place before him. *Wright v. Lewis* 339

RIGHT OF WAY.

To an action of trespass the defendant pleaded under the 2 & 3 W. 4, c. 71, s. 2, a right of way for forty and for twenty years. At the trial evidence was given to shew a right of way as far back as forty years, but no user of the right was proved within five years of action brought: Held, that this evidence did not support the plea, and that in order to support it, evidence of user from the beginning of the forty or of the twenty years, and up to a rea-

sonable time before action brought, must be given. *Parker v. Mitchell* . . . 31

SHERIFFS.

1. The Court, on disposing of a rule for a new trial before the sheriff, will, if it thinks proper, send the cause to be tried before a judge of the superior Courts, without a separate rule for that purpose. *Duddey v. Yates* . . . 300

2. If the undersheriff does not reserve leave to enter a nonsuit, the unsuccessful party cannot move for a nonsuit. *Beverley v. Walter* . . . 223

3. Where sheriff's notes are produced, they must be verified by affidavit, and the affidavit must be entitled in the cause in which the motion is made. *Cohen v. Williams* . . . 223

4. In an action against the sheriff for not leaving a year's rent on the premises upon executing a *f. fa.*, the plea of not guilty admits the seizure by the sheriff. *Reid v. Poyntz* 207

5. Where an undersheriff has not reserved leave to enter a nonsuit, as appears by the notes sent by him to the Court, an application for that purpose will not be entertained. *Beverley v. Walter* . . . 45

SHIPOWNER.

If the value of goods lost on board a vessel exceeds the value of the ship and freight, and there has been no default of the owner, he may file a bill in equity pursuant to 53 G. 3, c. 159, s. 7, to confine his liability to the ship and freight; but if an action has been brought for the recovery of the loss by one of the owners of the goods lost, the Court will not restrain the plaintiff from proceeding in his action during the pending of such a bill. *Thiselton v. Gibbons* . . . 271

SPECIFIC PERFORMANCE.

1. If it be clearly established that a purchase was made by a party as the agent of another, the Court will order a conveyance to the principal, though the appointment of such agent may not have been in writing; but if agency is denied, and any doubt arises as to the facts, the Court will direct an issue. *Milner v. Singletus* . . . 220

2. The Court will compel the express execution of an agreement for sale of lands, if it appears that the vendor has an interest which can be conveyed, and the purchaser was not aware at the time of entering into the contract of the vendor's inability to complete it according to its express terms. *Graham v. Oliver* . . . 204

TENDER.

A tender by cheque, in a letter, if not objected to on the ground of its form, is a good tender. *Jones v. Arthur* . . . 301

TITHES.

The 6 & 7 W. 4, c. 96, (parochial assessment act) applies to the rating of tithes; and they

may be under that act rated at their net annual value. The case of the *King v. Joddrell* laid down no new rule as to the rating of tithes. *The Queen v. Capel, clerk* . . . 489

TRUSTEE.

Where a person in a fiduciary situation purchases an annuity, acquiescence for several years is not a sufficient ground to prevent the transaction being set aside, and if the grant of the annuity is declared void, the Court will only allow the grantee to claim his original advance and interest, credit being given for the sums received by him on account of the annuity. *Greenlaw v. King* . . . 284

WARRANT OF ATTORNEY.

1. As between the original debtor and creditor, a consent to despend with the necessity of reviving an old judgment on a warrant of attorney is good, and execution may issue on such judgment without its being revived by *scire facias*. *Morris v. King* . . . 237

2. In order to render a warrant of attorney valid pursuant to the provisions of 1 & 2 Vic. c. 110, s. 9, it is necessary that the attorney attesting should act for the defendant only. *Sanderson v. Westley* . . . 207

3. The attorneys of the plaintiffs employed a partnership firm in the country to serve a copy of the writ of summons in the action upon the defendant. The defendant applied to them to procure time to pay the debt. They entered an appearance and delivered a plea in his behalf, but made his application to the plaintiffs. The defendant swore that he gave no authority to the attorneys to act as his attorneys in the cause. *Quære*, whether a warrant of attorney executed by him in the presence only of one of them is valid? *Whitaker v. Griffiths* 46

WILL.

1. A testator gave the residue of his personal estate to trustees, to pay on annuity to his wife for life, and the surplus of the annual proceeds thereof to his daughter for life, the whole residue to be equally divided among her children, or given to one child if she should have only one (subject to the wife's annuity,) and in case the daughter should have no child, then a power to her to give away by will 3000*l.*, the residue, after her death, to go to the nearest of kin of his own family: Held, that the testator's next of kin at the death of his daughter, he being also her next of kin at the same time, was entitled to the residue to the exclusion of her legal personal representative. *Clapton v. Bulmer* . . . 42

2. Upon a bill seeking to set aside a decree in a former suit, establishing a will, on the ground that the will was invalid and that the decree was obtained by fraud: Held, under the circumstances stated that the will was duly executed, and the decree establishing it properly made. *Archer v. Slater* . . . 27

WITNESS.

1. If on perusing the depositions of witnesses examined in a cause, it should clearly appear that the examiner has mistaken the evidence given by any witness, or has conveyed a meaning different to that which the witness intended, and the witness proves by affidavit this to have been the case, the court will permit a re-examination of the witness for the

purpose of correcting the mistake, but will not suppress the deposition. *Lloyd v. Waite*

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2. If it can be proved that a witness who has been subpoenaed is at such a distance from the Court as to be unable to attend the cause when the trial comes on, that is sufficient to entitle the plaintiff to bring his action against him, although he has not been called on his subpoena. *Lamont v. Crook*. 318

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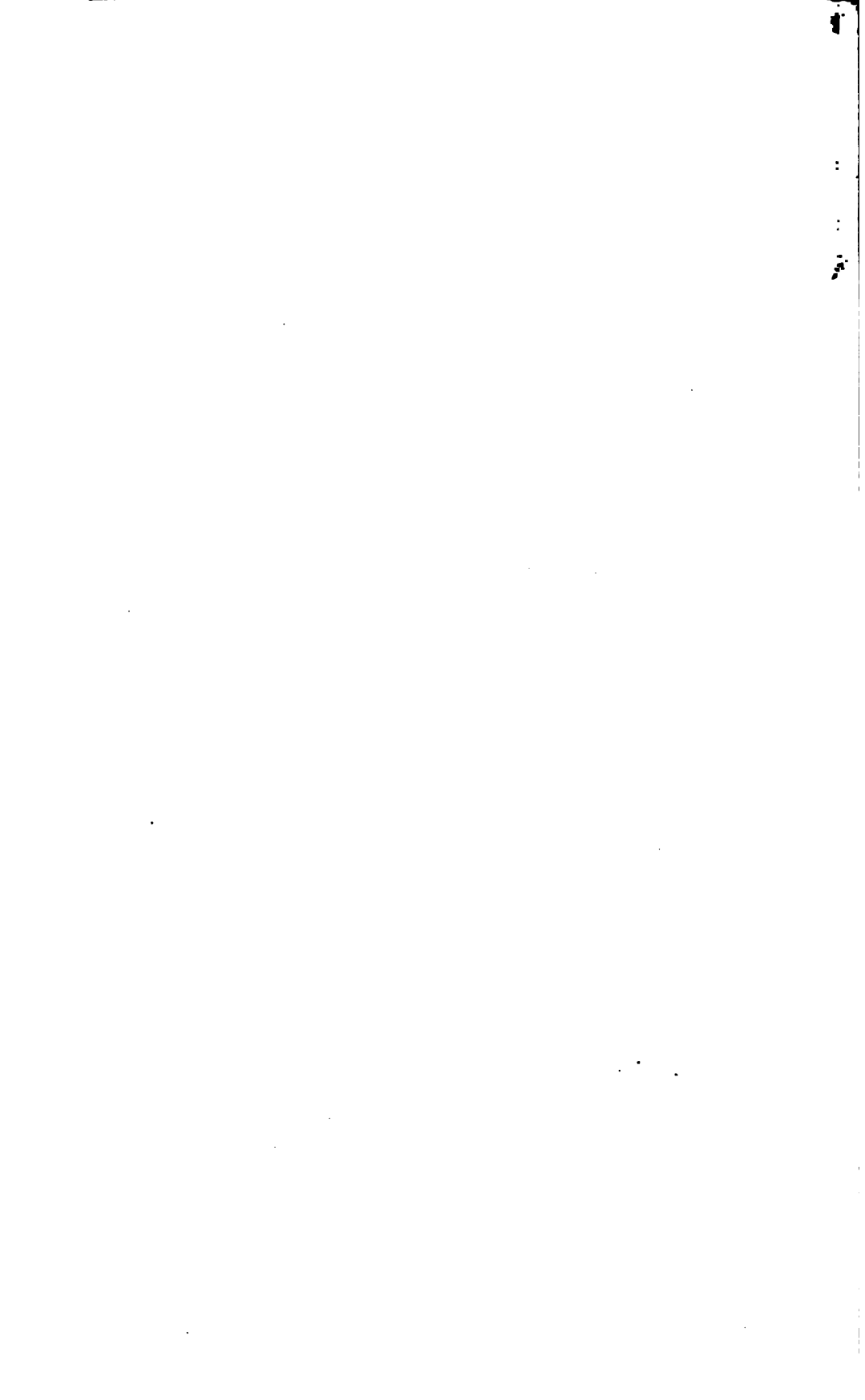
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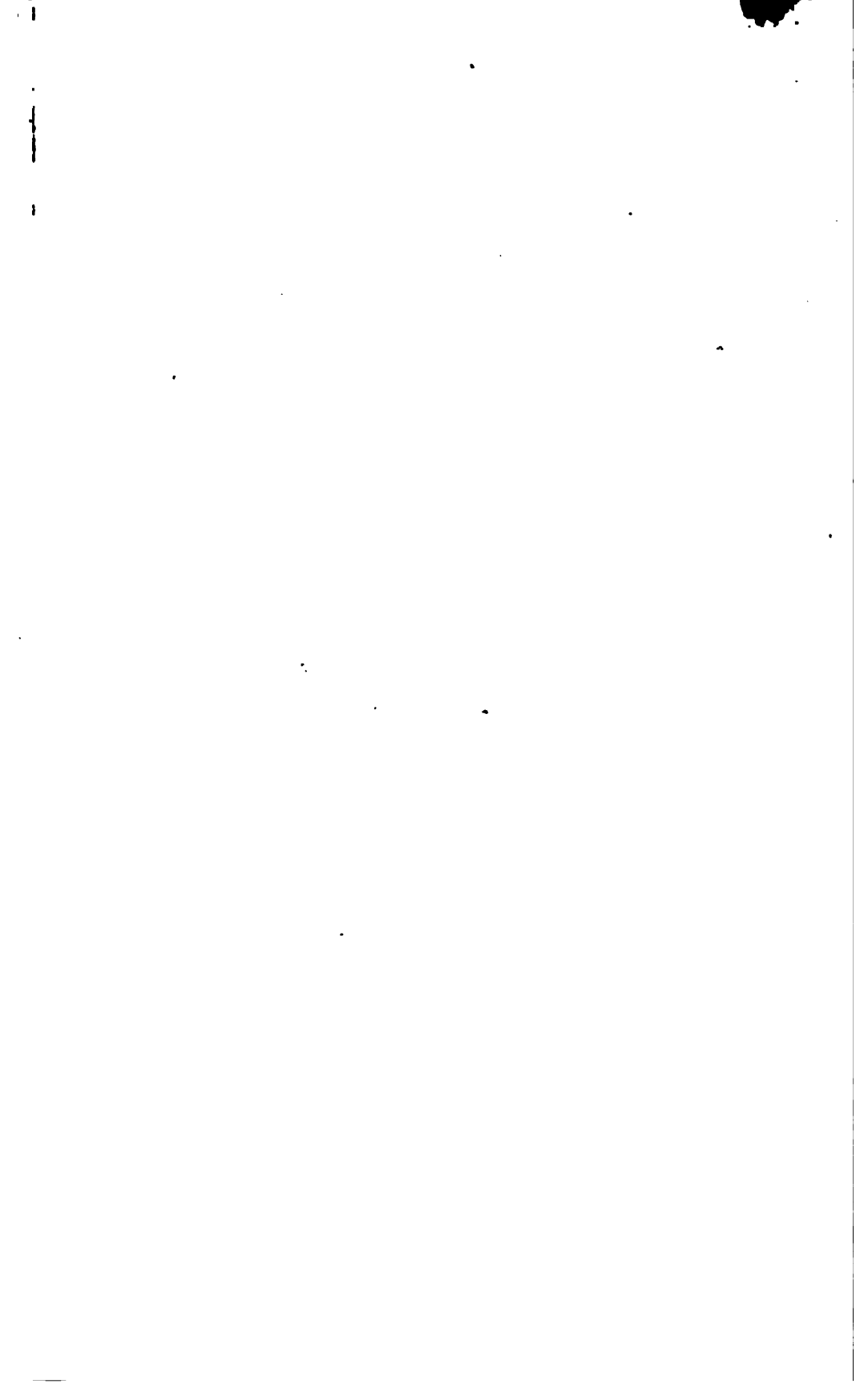
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